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Commission on, 1937

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

^{Hearings}
REPORT OF PROCEEDINGS

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Vol. 2, Pt. 1-2

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OTTAWA, ONTARIO, JANUARY 19, 1938

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ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, ONTARIO, JANUARY 19, 1938

The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Ottawa, Ontario, on Wednesday, January 19, 1938, at 10.30 a.m.

RES. NT.

HON. CHIEF JUSTICE NEWTON W. ROSELL, CHAIRMAN

DR. JOSEPH SIROIS	}	Commissioners
JOHN W. DAFOE, Esq.		
DR. ROBERT ALEXANDER MacKAY		
PROFESSOR HENRY FORBES ANGUS		

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Alex. Skelton, Esq.	Secretary
Adjutor Savard, Esq.	Secretaire Francais
R. M. Fowler, Esq.	Legal Secretary
Wilfrid Eggleston, Esq.	Assistant to the Secretary

FOR THE CANADIAN ASSOCIATION OF SOCIAL WORKERS:

Miss Joy Maines	Member, Board of Directors
Miss C. Jean Walker	Executive Secretary

FOR THE CANADIAN TEACHERS FEDERATION:

J. W. Noseworthy	Chairman Special C.T.F. Committee
Miss Jessie M. Davis	Member Special C.T.F. Committee
Mr. L. S. Titus	Member Special C.T.F. Committee

FOR THE ONTARIO ASSOCIATION OF REAL ESTATE BOARDS:

FOR THE LEAGUE OF SOCIAL RECONSTRUCTION:

Railway Committee Room,
Parliament Buildings,
Ottawa, Ontario,
January 19, 1938.

MORNING SESSION

The Commission met at 10.30 a.m.

THE CHAIRMAN: First on our list for this morning is the Canadian Association of Social Workers. The Brief will be presented by Miss Maines.

MISS JOY MAINES was called.

SUBMISSION BY

CANADIAN ASSOCIATION OF SOCIAL WORKERS.

MISS JOY MAINES: Mr. Chairman and Members of the Commission, I am accompanied by Miss Jean Walker, who is the Executive Secretary of the Association.

I have the honour to represent the Canadian Association of Social Workers, which is a group of professional men and women brought together by a common interest in maintaining standards in their own particular field of service in Canada. There is a membership of upwards of 500 qualified social workers, who are engaged in Public Welfare Administration such as Relief Departments, Administration of Mothers' Allowances, Old Age Pensions, Children's Protection Acts, care of delinquents, as well as many forms of private welfare services, including family rehabilitation and specialized forms of care for children and youth. They have day to day contact with those who are in need of social services."

I proceed now to the Brief as filed.

"The Canadian Association of Social Workers is impressed by the present tendency for public welfare services to assume more and more responsibility for the needs of those citizens who are unable to meet all of their needs from their own resources. There is evidence of this fact in the increased expendi-

"tures for unemployment relief, mothers' allowances and old age pensions, to mention only three public services.

One striking factor in this extension of services has been the aggravation of circumstances which has resulted in the Dominion government assuming responsibility on an ever increasing scale. If this acceleration of Dominion participation continues, it would appear that the federal government will find it necessary to set up additional machinery, both administrative and functional.

The tremendous amount of money involved and the large number of citizens affected by these services, make sound administration of prime importance. Fundamental to sound administration is personnel.

Because the object of social services is to alleviate personal distress and solve human problems, the direction of such services should be by persons skilled in understanding human relationships. Such understanding arises from the application of a method in dealing with these relationships, developed through the years by persons engaged in this delicate and intricate work. The method is taught and the practical skill acquired through special and intensive training. Social workers, qualified for their particular work, are already in the field. Others are being trained in several universities in the Dominion, with a definite view to being ready as Canadian society requires them."

If I might comment on this paragraph, it is realized by the Association that the administration of public social services is "big business" and therefore requires capable administrators with such qualities as ability in planning, organizing, acquiring and directing staff, coordinating of departments, skill in budgeting and reporting. We would respectfully suggest that intimate knowledge of the "subject matter" to be administered is also necessary. Therefore in the wise administration of social services there is needed those who are capable administrators with also a knowledge and understanding of human relationships. The administration of public social services carries with it responsibility for three groups:

- (1) Those for whom the services exist;
- (2) The staff whose operations carry out these services; and
- (3) The general public, including the taxpayers, who make these services possible.

To assure the acquiring of such skill and knowledge outlined as being necessary for the satisfactory administration of social services is the object of schools of Social Work, which are in operation in Montreal, at the University of Toronto, and the University of British Columbia. Courses in Public Administration are now also available at the University of Toronto and at Dalhousie University, and outlines of these courses are available. These courses of training are adapted to meet changing conditions and demands. The entrance qualifications for these courses are fairly high, and they are seeking to attract to such courses those who may become leaders in Public Welfare Administration.

To return to the Brief:

"If the increase in federal, financial participation in social services continues, as already indicated, the Dominion will inevitably exert an increasing influence. This influence would appear to be by one or two media: by grants-in-aid or by the establishing of federal machinery. In either case adequate personnel is needed: in the former case, to establish standards and to see that they are maintained; in the latter case, to insure the satisfactory operation of the federal machinery.

It is granted that there are many other points to be considered, but the Canadian Association of Social Workers wishes to stress one paramount point, namely, the need for adequate, fully qualified personnel in the administration and functioning of the social services."

To comment on the establishment of standards, may we point out that the basis of the policy adopted in regard to unemployment relief seems to have been rather short-sighted, the tendency being to appoint administrators with the main view to cutting costs without reference to the human values involved, and as a result social costs have piled up in other directions. For example, lack of provision of adequate food allowances results in increased hospital costs; the lack of consistent policy in regard to unemployed younger men has resulted in a transient group for whom there is little likelihood of re-establishment in employment or morale. Unemployment is likely to recur, and due consideration must be given to unemployment relief as a part of the

permanent Canadian social services.

To administer the Social Security Legislation in the United States recognition was given to the need of adequate personnel. A Social Security Board was appointed by Congress, the Executive Director of which was formerly the Executive Director of the American Public Welfare Association, and in turn departments were headed by Social workers with experience in public welfare work. So far as State appointments are concerned, because all State set-ups must be approved by the Social Security Board before Federal monies are made available to the States. The same tendency is evident in the State relations with municipalities, since municipal set-ups must be approved before grants are made. There is sufficient flexibility to allow for differences between one locality and another, and between one State and another, rulings being adjusted to suit local situations.

It is granted that there are many other points to be considered, but the Canadian Association of Social Workers wishes to stress one paramount point, namely, the need for adequate fully qualified personnel in the administration and functioning of the social services.

We would also point out that next in importance to the administrators are those entrusted with the supervision of staff. These persons should have training and experience in the practical side of the work, and should be able to instruct and guide those who are coming in contact with the individuals whom the social legislation is designed to benefit. In other words, social legislation of itself may be of little value. The important thing is to make it effective in the lives of the people whom it is designed to serve.

Turning to the Brief again:

"Therefore we beg to refer to the Royal Commission for serious consideration, that in the event of their report recommending any new social services, or adjustment or extension of existing services, they give due recognition to the need for adequate personnel in these services, since from years of experience in these matters we believe that qualified personnel is fundamental in effective service.

All of which is respectfully submitted.

Board of Directors

CANADIAN ASSOCIATION OF SOCIAL WORKERS

Per C. Jean Walker
Executive Secretary."

THE CHAIRMAN: Miss Maines, I think you said you had 500 members in your Association?

MISS MAINES: Yes, Mr. Chairman.

THE CHAIRMAN: Are they all or nearly all engaged in social work in connection with some of the various social services now being maintained by governments or municipalities?

MISS MAINES: A large proportion of them are, Mr. Chairman, but of course there is a vast number engaged in these services who are not members of our Association as yet.

THE CHAIRMAN: Quite, but what I wished to ask was this: In your own practical experience, do you find any difference in the efficiency of administration as between those services administered directly by municipalities and those where the control is more remote?

MISS MAINES: I am not sure that I get the point.

THE CHAIRMAN: We have had suggested to us in the Briefs of western Canada that the Dominion government should take over the entire cost of unemployment relief. That has been one of the suggestions made, and the question arises, first, of course, whether that should be done by the Dominion or not, and secondly, if it should be done, how it should be administered. Should the Dominion establish its own system of administration, or should they operate through the provinces and municipalities. Has your Association given any consideration to that matter? If not, we cannot ask you to express an opinion upon it. But if you have, we should be glad to have your view as practical social workers.

MISS MAINES: The functioning of Mothers' Allowances, for instance, in the province of Ontario at the present time is being done rather by remote control from the Parliament Buildings in Toronto. I believe that it is working out more satisfactorily now than it did formerly, when it was being left more to the direction of the local supervisors. That is only one instance which I can quote.

COMMISSIONER DAFOE: Are the decisions in respect to Mothers' Allowances in Ontario made by civil servants, or is there an intermediary advisory board?

MISS MAINES: There is a local advisory board.

COMMISSIONER DAFOE: In each district?

MISS MAINES: Yes, but the final decision is given by the provincial group.

COMMISSIONER DAFOE: The ultimate decision is made by people in the employ of the government?

MISS MAINES: Yes.

COMMISSIONER DAFOE: Not by a board?

MISS MAINES: No.

COMMISSIONER AUGUS: Would you distinguish at all,

Miss Maines, between a permanent social service like the granting of mothers' allowances, which has to go on from year to year, with roughly the same numbers of people concerned, and a temporary service such as might be set up for unemployment relief? Would you not expect that for unemployment relief you would need a larger personnel at a particular period, then a smaller personnel, then a larger number again, and so on?

MISS MAINES: Yes, I think that would be quite true. During the crisis of the unemployment period a larger number would be needed, and when unemployment figures were on the down grade, a lesser number would be required. It would seem to us that the supervisory positions and the permanent set-up should bear in mind such points as we have outlined.

COMMISSIONER ANGUS: You mean you have a large number of positions that would be filled by people who would be enlisted in the emergency?

MISS MAINES: Yes, and who would be trained by those of the permanent staff to meet the emergency as it arises. That is what has happened in past years both here and in other places, where the teaching of the staff that had to be recruited in a hurry was carried on by those who had had practical experience in the field before.

COMMISSIONER ANGUS: Another point I have come across in connection with the training of social service workers is this. I am told that the numbers required in the early age groups, from perhaps 20 to 25 years of age, are smaller than the numbers that are wanted in the higher age groups from 25 on. It is said that we want people with experience or maturity, and that in itself raises an employment problem. What are young

women to do who have acquired their university training and then find at the age of 21 that they are not wanted till they are 25? Is that a problem which gives rise to any difficulty in eastern Canada?

MISS MAINES: No, that is not happening here. I think that the younger group have been absorbed in positions. The supervisory positions have been filled with the older people, and they have attempted in the recruiting of workers to fill positions in the emergency, to take them from other fields such as the teaching profession or the nursing profession, where they have had some practical experience, and they have found that they give satisfactory service.

THE CHAIRMAN: Is there any other branch of the social services, Miss Maines, where you have this problem of direct immediate control and more remote control that has come within your observation?

MISS MAINES: Yes, the Children's Aid Society is similar. The province of Ontario, for example, exercises a certain control upon Toronto in regard to the establishment of standards of Children's Aid work throughout the province, and their inspectors visit these societies regularly and help to bring the local county societies up to a better standard of work and a better standard of service. The direct supervision is of more recent development, and it has succeeded in establishing better standards of service throughout the province.

THE CHAIRMAN: I suppose your social workers have not come into touch with the Old Age Pension administration particularly?

MISS MAINES: To some degree, but perhaps not as closely as in connection with the other services.

THE CHAIRMAN: Have you any opinion to express as to their methods of administration?

MISS MAINES: No, I am sorry I have not.

THE CHAIRMAN: I judge from the view you have presented in this Brief that your Association has the feeling that in the administration of social services in recent years there has not been an adequate trained personnel. Am I correct in that assumption?

MISS MAINES: I think so, Mr. Chairman.

THE CHAIRMAN: I assume you would not have presented it if you had not had that feeling.

MISS MAINES: Yes. We would also say, Mr. Chairman, that as large a number of personnel as was required was not available when the unemployment crisis arose a few years ago.

COMMISSIONER DAFOE: As a supplementary question, to which I do not press for an answer unless you desire to give it, have the governments in your judgment made the fullest possible use of the trained personnel that was available to put social workers into positions of authority?

MISS MAINES: No, I do not think they have.

THE CHAIRMAN: Here is another supplementary question, which please don't answer if you do not feel like answering it. Does your experience lead you to conclude that in the appointment of workers political considerations rather than the training of the personnel have been a factor?

MISS MAINES: I believe that is true, Mr. Chairman. I think it is to be expected perhaps from the conditions of the past few years. I think that the view in the minds of those in political power, shall I say, has been, as I said earlier, to keep costs at as low a level as possible, and they have been inclined to

think perhaps that social workers are too charitable, shall we say, and that costs will go up if they are put into the administrative posts. Unemployment relief, involving large expenditures, became big business overnight, and there being a large number of people unemployed who needed jobs, these seemed to be the places where they might be put, and there was no standard set up of the requirements necessary for the carrying out of such work.

THE CHAIRMAN: Just one further question, Miss Maines, from the other point of view, from the point of view of the relief recipient. Have the members of your Association in their experience found many efforts to defraud, in a sense, or to take advantage of the social services provided without coming up to the requirements for receiving relief?

MISS MAINES: I think, Mr. Chairman, there is always that group in society which will take advantage of anything. I do not think it is inherent in the system itself; it is probably in the individual.

THE CHAIRMAN: It is original sin, you think, Miss Maines?

MISS MAINES: Yes, I certainly do.

COMMISSIONER ANDUS: Does professional training include training in diagnosing that type of fraud?

MISS MAINES: Well, it provides training in psychology and psychiatry, which is supposed to help one sort out individual differences in characteristics of people.

THE CHAIRMAN: Thank you, Miss Maines, you have made a very interesting statement. Your Brief will be filed as Exhibit Number 96, and for convenience perhaps you would attach to it the supplementary memorandum from which you quoted this morning.

EXHIBIT NO. 96: Submission of the
 Canadian Association of
 Social Workers, with
 Supplementary memorandum
 attached.

THE CHAIRMAN: Next is the Brief of the Canadian Teachers' Federation, which is represented here by Mr. Noseworthy, Miss Jessie Norris, and Mr. Titus. I think we met Mr. Titus in the west.

MR. L. S. TITUS: Yes, Mr. Chairman, I had the pleasure of meeting the Commission in the west.

THE CHAIRMAN: It is a case of wise men from the west coming down to the east.

MR. J. W. NOSEWORTHY, Chairman, Special Canadian Teachers' Federation Committee, was called.

SUBMISSION BY

CANADIAN TEACHERS' FEDERATION

MR. J. W. NOSEWORTHY: First, Mr. Chairman and Members of the Commission, may I introduce Miss Norris, of Montreal. Before proceeding with the Brief--

THE CHAIRMAN: Would you tell us, Mr. Noseworthy, what official position you hold in your Association?

MR. NOSEWORTHY: We are a Special Committee appointed by the Canadian Teacher's Federation at their annual convention last August for the purpose of preparing a brief to be presented to this Commission, and they say that the Brief which we have prepared has been submitted to the executive officers of the Canadian Teachers' Federation, some of whom live in one or other of the nine provinces, and our brief has met with the approval of all those executive officers. Apart from my association with the Canadian Teachers' Federation, I am president of the Ontario Secondary School Teachers' Federation. Miss Norris is Past President of both the Protestant Teachers of Quebec and of the Canadian Teachers'

Federation. Mr. Titus is at present, president of the Saskatchewan Teachers' Federation.

THE CHAIRMAN: Thank you, Mr. Noseworthy.

MR. NOSEWORTHY: I should like first to call to your attention, Mr. Chairman, that our brief is divided into two parts, the second part, which we call the Supplement, beginning at page 15. While we have in Part II a considerable number of recommendations, we want to make quite clear to the Commission that the substance of our Brief is contained in Part I, which constitutes the first fourteen pages of the printed material.

I shall not attempt to read the Brief, Mr. Chairman, but simply call your attention to certain parts of it.

We recognize, first of all, the important position which this Commission holds, and that no government service will escape your attention during your investigation. It is because of that we want to call to your attention the needs of the Educational Services of the Dominion. We realize, as set out in our Brief, that education is, under the British North America Act, a provincial matter. We are suggesting that in 1867 Education was made a provincial matter for a number of reasons, the first of which we state was the safeguarding of the religious and racial interests of minorities. The second important reason we are suggesting is that there was in 1867 very little appreciation of the national importance of education. But since then circumstances have changed so that we feel that education to-day is a matter of deep concern to the Dominion as a whole. We point out our position at the foot of page 1 of the Brief:

"Put briefly, our position is this: that education is now a service of supreme national importance, that an approximately equal--not

"necessarily identical--educational opportunity is the right of every young person in Canada, and that the nation as a whole should take such steps as circumstances will permit to provide this equality."

That is the position we take in presenting our Brief.

THE CHAIRMAN: Mr. Nosworthy, when you say, 'equality' you recognize, of course, that it is a very difficult thing to define. A child in a frontier settlement in any province must necessarily from the very circumstances of his life have a more limited opportunity for educational advantages than a child residing in any of our larger cities. Is that not the case?

MR. NOSEWORTHY: We fully appreciate that, Mr. Chairman, but we feel that much more could be done at the present time, with the cooperation of a number of governmental authorities, for the child in the frontier settlement or even in the rural and smaller communities of the country than is being done now, when the education of these children is left largely to the municipality concerned.

THE CHAIRMAN: Is there not a second problem confronting the authorities? I am just raising these questions now so that we shall have the benefit of your views upon them. This matter may be dealt with in your Brief, but I have not had the opportunity of reading it.

A practical difficulty at the present time, I have understood, in connection with many of the unemployed youth, is that they are not fitted for the occupations in which there is a demand at present here in Canada for labour. In other words, without educational direction--perhaps even if they had it, it might not have

been in the right direction--they are not now qualified to undertake the work that is available at the present time in certain sections of Canada. How do you suggest the problem should be dealt with in providing educational facilities? We have all had the idea that every child should be entitled to pursue any course he chooses. I am not suggesting that I have departed from that idea, but I have seen the practical difficulty, that the result may be that when he gets through his course he cannot find any work to do, and therefore there should be some direction or guidance having regard to the country, its industries, its opportunities and so on, that would help students in the course of their education to fit themselves for some occupation in which they would find the opportunity for work when they are through their education at school. That applies to agriculture as much as it does to any other line of industry.

MR. NOSEWORTHY: We have touched on that question to some extent, at least, Mr. Chairman, on page 17.

THE CHAIRMAN: Then we will deal with it when we come to it.

MR. NOSEWORTHY: Turning to page 2 of our Brief, under the heading "Education is a Service of Supreme National Importance" we simply point out the difference between the situation existing in 1867 and the present day so far as educational needs are concerned. We say that in 1867:

"Nowhere in Canada was attendance at school compulsory for children...Contrast that with the present-day conditions. In every province but one, attending school is compulsory. A great and growing proportion of our youth attend secondary schools, and the day

"is not very remote when some kind of education on the secondary level will be practically universal. Every province has taken at least the initial steps in the development of an extensive system of vocational and commercial schools."

We go on to point out that these changes are the result of two kinds of pressure. First the public demand for an ever-higher level or standard of education. We feel that there is no doubt that the increased expenditures on education and the increased educational facilities have come about as a result of public demand. Secondly it has been necessary because of the growing complexity of modern life. In that connection we feel that there is such interdependence between the provinces that the programme of education maintained in one province is the direct concern of every other province.

We have suggested in our Brief that in Canada people move from one province to another quite freely, and in large numbers. Actual statistics show that the Canadian-born population of British Columbia, for example, were born to the extent of 37 per cent in the other provinces of Canada. In Alberta and Saskatchewan the percentage of Canadian-born citizens who were born in other provinces of Canada runs close to 29 per cent, in the one case, and to 31 per cent in the other. We have not the figures for the adult population, but as far as we were able to discover, the percentage of the adult population living in one province and born in another is much higher than the figures I have quoted for the entire population, because the children have not yet had time to move. That to us is a significant feature because it means that we are educating children in one province who in all probability will become, some

of them, in the future citizens of another province. It makes education a matter of interprovincial or federal importance.

We go on in the second column of page 4 to point out that this national importance of education has been recognized by the Dominion government in a number of ways. We refer to the Agricultural Instruction Act of 1913, in which the federal government recognized apparently that agricultural education was of sufficient importance to warrant federal support; that the provinces, left to themselves, were not able to support an educational programme with respect to agriculture.

THE CHAIRMAN: Mr. Noseworthy, I do not recall the provisions of the 1913 Act. What did it do broadly, just in a general way?

MR. NOSEWORTHY: It granted \$10,000,000 to the provinces in aid of agricultural instruction, to be spent on practically the same basis as the grants made under the Technical Education Act of 1919.

THE CHAIRMAN: That was in 1913?

MR. NOSEWORTHY: 1913, yes.

THE CHAIRMAN: The Agricultural Instruction Act?

MR. NOSEWORTHY: Yes, it granted \$10,000,000 of federal funds to the provinces for the establishment of agricultural schools.

THE CHAIRMAN: And that was payable over a period of years?

MR. NOSEWORTHY: Over a period of ten years.

THE CHAIRMAN: On the basis of the provinces also making contributions?

MR. NOSEWORTHY: 50-50 contributions. In 1919 the Technical Education Act was passed, providing for \$10,000,000 to be spent in aid of technical education.

THE CHAIRMAN: The Technical Education Act was passed by the federal government, as I recall it, on the view that the federal government being responsible for Trade and Commerce, it was of great importance that the youth who might be engaged in trade and industry should be qualified so that we might be able to compete with other nations where technical education was developed.

MR. NOSEWORTHY: We feel also that it was an acknowledgment of the fact that the provinces were not in a position to maintain an adequate programme of technical education. I think we have to accept that as being the basic fact underlying that grant. That Act was renewed in 1931, but it has not yet been put into operation, but it is still on the statute books, I understand.

THE CHAIRMAN: It was renewed for the balance of the grant that had not been expended, or was there a new vote?

MR. NOSEWORTHY: There was a new grant of \$750,000 to be voted annually for technical education, but it has not yet been put into operation.

THE CHAIRMAN: We were informed in Saskatchewan, I think it was, that that province had not been able to take advantage of the provisions of the Act because they were not able to put up their share of the contribution, and they said, as I recall it, that approximately \$250,000 was standing to the credit of the province, which they had not been able to utilize by reason of their inability to put up their share. Perhaps Mr. Titus could say whether I am correct in my recollection.

MR. TITUS: It would be the province of Manitoba, Mr. Chairman.

MR. NOSEWORTHY: We shall argue later against the granting of that type of subsidy, where the province must

put up dollar for dollar with the Dominion. We feel that it handicaps the province that is in a weak financial position.

We go on to point out in our Brief that in other ways the federal government has assisted education in the provinces. A vocational rehabilitation fund of \$1,000,000 was granted last year, and that has a direct bearing on education, as I think you have yourself intimated, Mr. Chairman, in that it involves the education of certain classes of our youth and the vocational direction of these youth. We feel that that rehabilitation measure is directly associated with education as well as with unemployment.

Again, the Dominion government supports, for example, the Royal Military College, at Kingston; the Department of National Defence manages an extensive programme of military and ednaval education, including the encouragement of cadet corps in schools; then there is the education of the Indians, and of all persons in the Territories.

THE CHAIRMAN: Of course, Mr. Noseworthy, those are on a different basis, the Royal Military College, and so on. The Royal Military College is a part of our National Defence, for the training of those who may possibly become officers in the Army or Militia. The education of the Indians, of course, is a subject that comes wholly under Dominion jurisdiction.

MR. NOSEWORTHY: Yes, but what we are intending to show is that for one reason or another the federal government has at various times stepped into various phases of educational activity throughout the Dominion. So that we are not asking for an entirely new departure in federal activities or practice.

One other educational activity to which we call attention in our Brief is the educational branch of the Dominion Bureau of Statistics. This branch produces a series of bulletins on educational topics. It produces the Educational Year Book and renders invaluable assistance to educators throughout the provinces.

.THE CHAIRMAN: Of course, Statistics is another subject that is specially committed to the Dominion under the British North America Act. I am simply suggesting, Mr. Noseworthy, that it does not appear to me that either the Royal Military College, or the provision for the education of the Indians, or the compilation of educational statistics, all of which are expressly committed to the Dominion, are illustrations that would back up your submission. The other two, technical education, and aid for agricultural instruction, would possibly support your contention.

(Page 2670 follows)

MR. NOSEWORTHY: We simply submit them, sir, for what they are worth.

THE CHAIRMAN: Quite.

MR. NOSEWORTHY: As examples of ways in which the federal government has directly or indirectly assisted education. In the second column on page 4 we say: "Our purpose in mentioning these educational services is to point out that they represent a recognition by the federal government of two facts; first that education is of interest to Canada as a whole; and second that the limited financial resources of the provincial governments do not permit them to undertake a complete system of education."

We think we are voicing the opinion of a large number of Canadians when we state that the national importance of education justifies the dominion government in taking any steps they can take within the constitution or by amendments to the constitution to further the cause of education within the country or to come to the assistance of the needy provinces within the dominion.

COMMISSIONER ANGUS: Do your examples prove quite as much as that? Might they not be said to prove that some particular phases of education were of importance to the dominion, and secondly that while the provinces could perhaps pay for them, they would consider that other matters were more important from their standpoint, and therefore require a dominion inducement such as a 50-50 grant?

MR. NOSEWORTHY: Your first suggestion, sir, that only certain phases of education are of interest to the dominion is not in accord with our views. We feel an adequate educational programme of the elementary and the secondary school type is of grave national importance;

that certainly it is of importance to one province that an adequate programme of education should be maintained in the others.

COMMISSIONER ANGUS: I follow the argument you are making. Do these examples represent a recognition by the dominion of that fact?

MR. NOSEWORTHY: We have not stated that in quite such broad terms as you intimate. It does, we think, illustrate the interest of the dominion in some phases.

THE CHAIRMAN: It helps your argument.

MR. NOSEWORTHY: On education.

COMMISSIONER DAFOE: A generous inference among the possibilities.

MR. NOSEWORTHY: Yes.

THE CHAIRMAN: I am raising these questions only to get your views, because that is really what we are here for. When you say that education is of national interest we say, yes, of course it is in the broad sense. When you say that education in each province is of interest to the other provinces I say, of course it is, in the broad sense, because they are educating Canadian citizens. But the administration of justice in each province is a matter of interest to every other province, and yet under the constitution the administration of justice is a provincial matter. I am making these remarks only as an illustration of another very important national concern.

MR. NOSEWORTHY: I make no suggestion that education should be taken out of the hands of the provinces and transferred to the dominion, or that the dominion should assist the province in the administration of justice. I shall not attempt

to draw any analogy between education and the administration of justice, sir, with you. I might simply say that we are not suggesting that the administration of education should be taken from the provinces.

THE CHAIRMAN: No. You are suggesting assistance?

MR. NOSEWORTHY: We are suggesting federal assistance where needed.

A fairly large section of our brief, from page 5 to page 11, deals with the question of equality of educational opportunities. I shall touch very briefly on some of these. In the first paragraph on page 5 under that heading we point out that many changes have taken place, -- the development of modern industrial civilization, the growth of interprovincial dependence, the opening of the west, the growth of international trade -- which have caused strains in the constitutional structure of our government. New social services have been demanded by our people such as mothers' allowances, old age pensions, health services and relief. These have all piled up as a charge on the provincial exchequers over the years that have passed. In addition to that there have been enormous expenditures required for building up roads and providing motor transportation with the result that in our opinion the provincial governments have, in many cases, reached the point where adequate financial assistance for education is simply unavailable at the present time.

At the top of page 5 we call your attention to a table. This table is taken from a book entitled "Federal Subsidies to the Provincial Governments of Canada." You will note there that the ordinary expenditures of the federal government in 1919 were \$35.51 as against \$33.60 in 1933. This is on a per capita basis; while the provincial expenditures per capita rose from \$9.19 in 1919

to \$18.75 in 1933. In other words, while the ordinary federal expenditures per capita were slightly decreased, the provincial expenditures per capita doubled in those years. That is also generally true of the bonded debt and treasury bills per capita. The federal debts, and treasury bills on a per capita basis have been reduced from \$31.2 to \$23.1; whereas the provincial have increased from \$37 to \$117. These figures show that the provincial debt has trebled.

THE CHAIRMAN: What is the inference you draw?

MR. NOSEWORTHY: The inference we draw from that is set out in the second paragraph. It has become abundantly evident that although the necessity for expenditure on the social services affects all provinces alike, they have very far from equal abilities to pay taxes to maintain these services. The natural consequence is certain provinces can support without undue strain an adequate programme of services, while others must be taxed to the utmost to provide even a very meagre programme. Consequently educational expenditures have been left almost entirely to the municipalities. The provinces have been obliged to assume so much responsibility for all these other services which have been created since the B.N.A. Act was enacted that they have been obliged to leave the financing of education to the small school sections.

THE CHAIRMAN: That is true in connection with unemployment relief. It is a very, very heavy burden undoubtedly, on the provinces and the municipalities; but other social services have been voluntarily assumed by the provinces, have they not?

MR. NOSEWORTHY: Voluntarily assumed, but to meet a very pressing provincial need.

THE CHAIRMAN: Yes. What I am coming to is this: The provinces having the choice of establishing social services or maintaining educational facilities to a high degree, chose social services. Is that the effect of your contention?

MR. NOSEWORTHY: Well, apparently the provincial governments have felt that some sort of educational programme could be maintained at the expense of the municipality, and that provincial funds would then be available for the social services. After all in some ways it is probably much easier to get the provincial government to spend money on roads and bridges and such like services than on education.

THE CHAIRMAN: I am prepared to assume you are correct in that statement, but is not that a matter of provincial discussion? Is not that a matter where the people of the province have the remedy in their own hands by saying to their government, you shall spend more on education and less and less on these other services?

MR. NOSEWORTHY: I suppose that is true. But in the matter of most of these social services I believe the provincial governments assume that they are absolutely essential to the welfare of the people, and it is a matter of attempting to shelve the responsibility for education upon the small municipality.

What we shall eventually ask is that some federal aid be granted on the basis of provincial need, not on a straight per capita basis. We are trying to show that there is within the province a great inequality in the ability to maintain both education and social services.

Our table on page 6 is intended to give, and I think it does give a fairly accurate picture of the tax paying

of the different provinces.

COMMISSIONER DAFOE: Are these figures official?

MR. NOSEWORTHY: They have been very carefully checked with the Dominion Year Book.

COMMISSIONER SIROIS: If you are going through these figures on pages 6 and 7 I think it might be well to draw your attention to the following facts in so far as the province of Quebec is concerned. I think Miss Norris is quite familiar with these facts. You have \$12.13 representing the per capita expenses in the Ordinary Expenditures column for the province of Quebec. I do not believe these figures represent the real situation because we have a large number of private educational institutions, and the charges for education are practically nil. I do not believe you can translate that into dollars and cents and say that the per capita figure of \$12.12 represents the whole effort of the province.

Take, for instance, higher education. We have a large number of colleges --- we call them seminaries -- where we have many professors who are highly qualified scholars, and are known as such all over Canada. They receive from their institutions \$200 per year as a living allowance, if you prefer to call it that. If we took the figures you have here we might say that the whole effort of the province is rather low. I do not believe these figures are fair. I believe it is necessary to mention these facts at this stage of the proceedings, I am sure Miss Norris, who comes from Quebec, can confirm what I say in that regard.

MISS NORRIS: May I speak, sir?

MR. NOSEWORTHY: You are referring to the table on page 10?

COMMISSIONER SIROIS: All your tables, but I am referring particularly to the tables on pages 6 and 7.

The same applies to the table headed: "Estimated Value of Land, Buildings, Furniture and Equipment of Schools." In Quebec province some of our universities are privately owned. Take, for instance Laval. Laval has been built and maintained by the Quebec Seminary. I do not believe you will find that valuation here. It cost millions and millions of dollars. I am not contesting any of these figures. I simply say they do not represent the real situation in Quebec. That is what I mean.

MR. NOSEWORTHY: I may say here that our figures are all taken from the Dominion Bureau of Statistics.

COMMISSIONER SIROIS: Quite. I am explaining how these figures do not represent and cannot represent the real situation.

MISS NORRIS: May I speak with regard to Quebec Protestant education? I am speaking now simply of the government allowance, the provincial government allowance for protestant education in Quebec, not including universities.

COMMISSIONER SIROIS: I am saying these figures do not represent the real Catholic effort in the province of Quebec so far as education is concerned.

MISS NORRIS: May I finish my statement?

COMMISSIONER SIROIS: Excuse me.

MISS NORRIS: For Protestants the provincial contribution is only 4 1/4 per cent, which is much lower. That is, for Protestant publicly controlled schools; and if the provincial government gives the Protestant provincially controlled schools only about 4 1/4 per cent I am afraid that it does bear out the statement here.

COMMISSIONER SIROIS: I am speaking of the ^{not} publicly controlled schools. In our province there are a large number of private schools, and they are

tremendously important. They are not represented in dollars and cents by these figures. That is what I have in mind.

MR. NOSEWORTHY: I think probably that is explained.

COMMISSIONER SIROIS: These are not fair, so far as that is concerned.

MR. NOSEWORTHY: We are concerned here with the direct contribution of the provincial governments to education.

COMMISSIONER SIROIS: I wanted to make that clear.

MR. NOSEWORTHY: I think it is accepted and generally understood that there is a great deal of voluntary work carried on in the province of Quebec.

COMMISSIONER SIROIS: Great care will have to be taken when dealing with these figures.

MR. NOSEWORTHY: The purpose of the table on page 6 is to illustrate the inequality among the provinces in their ability to support adequate education and social services, and their inability to pay taxes.

Now, we have called attention to a number of items such as "Per Capita Excise War Taxes." You notice they vary from 69 cents to \$16.17. "Per Capita Wholesale Trade" varies from \$30.00 in 1935 to \$136; "Per Capita Retail Trade, 1935" varies from \$107 to \$250; "Per Capita Gross Production, 1934" varies from \$194 in Prince Edward Island to \$488 in Ontario; "Per Capita Motion Picture Receipts, 1935" varies from 99 cents in Prince Edward Island to \$4.14 in British Columbia.

THE CHAIRMAN: British Columbia is high on motion pictures.

MR. NOSEWORTHY: Yes; they apparently are nearer to Hollywood than the rest of us.

COMMISSIONER DAFUE: A frivolous community.

MR. NOSEWORTHY: The "Per Capita Gasoline Sales, 1935" varies from 30.1 gallons in Prince Edward Island to 73.9 gallons in Ontario; "Per Capita Car and Truck Licenses, 1935" varies from \$1.05 in Prince Edward Island to \$3.09 in Ontario; "Per Capita Gasoline Tax, 1935" varies from \$1.83 in Quebec to \$4.07 in Ontario. Ontario, you see, drives more cars than do the other provinces. The people burn more gasoline. The figures in regard to the per capita 5 per cent special tax are not so significant. For some reason or other Prince Edward Island is high. The per capita income tax assessments, 1936, show Ontario again leading with \$12.21 against 35 cents for Saskatchewan. The per capita income tax assessments, 1936, show that Saskatchewan is low with a figure of \$16.48; whereas Ontario and Quebec are both fairly high. The per capita value of building permits, 1936, shows Saskatchewan again low with 69 cents as against \$7.95 in British Columbia. In 1936 they had a building boom in British Columbia.

THE CHAIRMAN: I think my colleague, Mr. Angus, would say that is the normal progress.

MR. NOSEWORTHY: We believe this table illustrates the need for some equalization grant, and that is what we are asking for.

THE CHAIRMAN: In regard to the per capita value of construction contracts, I notice that New Brunswick heads the list.

MR. NOSEWORTHY: New Brunswick heads the list of construction contracts in 1936 with a figure of \$21.83.

THE CHAIRMAN: What is meant by "Per Capita Ordinary Expenditures"? Is that expenditures of the provincial government?

MR. NOSEWORTHY: That is the per capita ordinary

expenditure of the provincial governments.

COMMISSIONER SIROIS: Not the municipalities; only the governments?

MR. NOSEWORTHY: Yes.

THE CHAIRMAN: Just the provincial governments?

MR. NOSEWORTHY: Yes.

THE CHAIRMAN: That is hardly right so far as British Columbia is concerned, because in British Columbia a great deal of the territory is administered direct by the government, not the municipalities. It is correct according to the Bureau of Statistics, but there is that qualifying factor. I believe that applies also to Prince Edward Island.

MR. NOSEWORTHY: We point out that this cannot be taken as an accurate index of the tax paying ability, but we think it gives a fair general picture of the tax paying ability.

On page 7 we give a table showing the receipts of provincial-controlled schools that may need a little explanation.

In regard to expenditures of provincial-controlled schools, the official tables are not available for all provinces. The best we can do is to give a table of the amounts each of the Boards of Education receive. That is not the same as expenditures, but it is the nearest estimate we can get of the actual expenditures on education.

COMMISSIONER DAFOE: This would be taxes, plus provincial grants?

MR. NOSEWORTHY: Yes, municipal tax plus provincial grants or fees and other sources of income. We call attention there to the increase in the average attendance between 1925 and 1934. We call attention also to the amount that has been spent per pupil in 1925, 1930, and

1934. You will notice there that Prince Edward Island, Nova Scotia and Quebec, spent per pupil in 1934 approximately the same as was spent in 1925.

THE CHAIRMAN: In 1925?

MR. NOSEWORTHY: 1925, yes. The amount per pupil spent in 1925 in Prince Edward Island, Nova Scotia and Quebec was almost the same. In New Brunswick the amount per pupil dropped from \$57 to \$35. In Ontario it remained fairly stationery. It dropped from \$73. to \$70. You will notice that in Manitoba it dropped from \$82 per pupil to \$55, and in Saskatchewan from \$87 to \$43, which is a drop of more than 50 per cent in the educational expenditures per pupil in those nine years. In Alberta the drop is not so marked. There was a drop of \$20 per pupil in that province, and a drop of \$16 per pupil in British Columbia. That illustrates the effect of the depression upon the educational opportunities of the different provinces; and again, we think, illustrates the inequality of ability to some extent.

COMMISSIONER ANGUS: Would the main drop there be in teachers' salaries?

MR. NOSEWORTHY: That is largely true. There is a minimum to which maintenance costs can be reduced; that is, it requires a certain amount of coal to keep a school building warm and that cost is fairly regular. Not much saving can be effected in maintenance costs and other educational services. The one place where educational costs can be saved most easily and most rapidly is in teachers salaries. We think that is quite true, especially in the western provinces.

There is one point to which I think I should call attention. I shall call attention to that point later. The total in regard to the estimated value of lands, buildings, furniture and equipment appears in a table

at the end of page 7. Inequalities are stressed there. Our point is that certain provinces are apparently in a position to afford much better buildings and equipment, educational facilities, than others. The range is from \$103 per pupil in Nova Scotia to \$278 in Ontario and \$241 in British Columbia.

COMMISSIONER SIROIS: This refers also to provincial-controlled schools?

MR. NOSEWORTHY: Yes, sir, and it does not take into account the private schools.

THE CHAIRMAN: These figures do not include the universities.

MR. NOSEWORTHY: No; they are the publicly controlled elementary and secondary schools. On page 8 is given an explanation which I should like to read. I am taking up now an explanation of the tables that follow regarding teachers' salaries. This is an explanation of the table on page 8:

"What we do wish to emphasize however, is the great inequalities in teachers' salaries throughout Canada. As a consequence the teaching profession is very much less attractive in some provinces than in others, and the equality of the educational opportunity offered is bound to suffer.

The salary figures quoted below are unfortunately not strictly comparable as the provinces have not yet a uniform method of reporting statistics. For seven of the provinces, salary averages are given for rural and urban schools, regardless of the classification of the schools. The average for urban schools, therefore, are the average salaries paid elementary and secondary school teachers in village, town and city with two

minor modifications -- village school salaries for Nova Scotia are given with those of the rural school, thereby raising this average slightly above what it actually is in strictly rural schools. For British Columbia averages are given according to three classes of school areas in that province. Separate tables are given for Ontario and Quebec since the statistics for these provinces are not strictly divided into rural and urban classifications. Notwithstanding these differences, we think the general picture of teachers' salaries across Canada is quite plain."

Our table does not give as accurate a comparison as we would like it to. I need not do more than call attention to the differences between the rural and urban schools. A glance at the first table shows that the average salaries in urban schools ranged from \$767 in 1936 to \$1,369; in rural schools from \$465 in Saskatchewan to \$723 in Alberta. These are figures for 1936. I am told by Mr. Titus that the average salaries in Saskatchewan in 1937 are much lower than the figures we have quoted for 1936.

In the second column we give the elementary schools, complementary and superior schools, the elementary Protestant schools, intermediate and high schools. A glance at the figures there shows you the inequalities. We have called attention, I think quite fairly, to the fact that the largest single group of teachers in the province of Quebec, the rural lay female teachers, 7,500 in number, received in 1934 an average salary of \$212. That to the Canadian Teachers' Federation is a matter of some grave concern.

We call attention also to the average salary for all elementary rural school teachers. Prince Edward Island,

Saskatchewan, and Quebec, if you except the lay male teachers in the Roman Catholic schools the average salary of all elementary rural school teachers in those three provinces is less than \$500 a year. We figured out this morning that the weekly salary for all rural school teachers across Canada ranges from \$8 to \$15.

THE CHAIRMAN: From \$8 to \$15?

MR. NOSEWORTHY: From \$8 to \$15 per week. The minimum is \$8 and the maximum is \$15. The median salary for each of the provinces ranges from \$8 per week in some of the provinces to \$15 in British Columbia.

THE CHAIRMAN: I think we were given information by Mr. Titus in Saskatchewan that there were a large number of teachers in the rural schools there who did not receive in excess of \$200 or \$300.

MR. TITUS: I cannot recall the figures from memory. In 1936 I think there were something like 200 and some odd teachers who received between \$200 and \$300; there were something like 4,000 teachers who received under \$500 and something like 2500 who received \$400 or less.

THE CHAIRMAN: Mr. Noseworthy, has the very serious depression, particularly in Saskatchewan and to some extent in Manitoba and Alberta, brought the average down to such an extent that it is hardly a helpful one? I do not know if that is true; I am just raising the question.

MR. NOSEWORTHY: In 1935 the weekly salaries received by rural school teachers across Canada was approximately \$9. The figures for 1935 are the latest available. In Saskatchewan the 1937 figures would be considerably lower and possibly the same would apply to some of the other provinces. In Prince Edward Island the weekly salary was \$9 for the men and \$8 for the women; in New Brunswick \$9 for men and \$8 for women; in Ontario \$12 for

men and \$12 for women; in Manitoba \$10 for men and \$9 for women; in Saskatchewan \$10 for men and \$9 for women; in British Columbia \$15 for men, \$13 for women. The range is from \$8 per week in a number of the provinces. That is the median salary, which I think is probably fairer than the average.

THE CHAIRMAN: The teaching profession is not overpaid.

MR. NOSEWORTHY: We now come to the section headed "Minimum Salary". We give a brief summary here. We say that according to the latest figures available there were 7 teachers in the city schools receiving less than \$500; 211 teachers in towns and villages receiving less than \$500; in rural schools of more than one room 548 teachers receive less than \$500; in one room rural schools 4,439 teachers receive less than \$500. This is given simply to call attention to the difference in the salaries paid teachers in rural communities as compared with urban communities.

THE CHAIRMAN: I suppose the cost of living is different.

MR. NOSEWORTHY: Cost of living, sir, is undoubtedly a factor; but we do not believe it is a factor of sufficient importance to account for the difference sir.

THE CHAIRMAN: No; it would not account for the difference, and I do not know how much of it it would account for

MR. NOSEWORTHY: The difficulty is that the rural education costs are borne to a very large extent by the local municipalities or the school sections with the result that the rural schools of Canada are the training grounds for cities. Teachers who go to the rural schools, go there from the training classes, remain for one, two or

three years and then pass into the city schools where better salaries are obtained and the cities, not the municipalities, receive the benefit of that training. That, we think, is unfair to the children in the rural municipalities.

COMMISSIONER ANGUS: The difference there apparently related not to cost of living so much as to standards of living. That is to say, one who is teaching would be able to mix on a footing of equality with other citizens and in an impoverished rural area much less is needed for that than in an urban area.

MR. NOSEWORTHY: We are not so much concerned with that angle as with the fact that year after year rural communities are receiving young, untrained teachers and giving them a year or two of experience and then taking on young, inexperienced teachers again, with the result that the rural children are not getting the advantages of the experience of the higher qualified teacher. We feel that if any school in the country needs the assistance, needs the services of the best teachers it is the smaller school where the teacher is thrown entirely on his own resources without much equipment and without the experience of his fellow co-workers or a well-trained principal. Where a teacher is thrown entirely on his own resources, that we feel is the place where a good teacher is needed; and good teachers cannot be induced to teach in those areas unless there is something more adequate paid by way of salary. We are looking at it from the standpoint of the children and education rather than from the teachers point of view.

MISS NORRISS: I wonder, Mr. Chairman, if figures from the United States survey would be in order here? There are no figures in Canada comparable because we have not a research bureau that could prepare them.

The senior specialists on rural education problems in Washington state that in ordinary times in the United States the salary of the urban teacher is two and a half times that of the rural teacher. Since the depression the urban salary is three and one third times the rural salary. The article concludes with this remark, that the democratic system of education is not a reality when some teachers must maintain themselves at such a disadvantage, when poorly paid teachers are called upon to bear the greatest burdens necessitated by retrenchment, and that professionally trained teachers cannot be attracted to nor remain long in small rural schools. I am interjecting that here because they have the figures where we have not.

THE CHAIRMAN: It may be that the depression has accentuated the situation but apart from the depression the situation of the young teachers going to the rural schools for training and then getting a better paid position in the city has always existed.

MR. ROSEWORTHY: Oh, yes, to a very great extent.

THE CHAIRMAN: It is not something that arose in the last few years.

MR. NOSEWORTHY: I should like to call your attention to the second long paragraph in the first column on page 9, which reads as follows:

"Further evidence of inequality of opportunity is seen in the comparison of the percentage of pupils of secondary school age in attendance at school from urban and rural communities. In urban communities of Canada 43.7 per cent. of the boys between the ages of 15 and 19 are in school, whereas, in rural communities only 21.3 per cent are in school. Between provinces the percentages range for rural atten-

dance from 33 per cent. in British Columbia to 11.4 per cent in Quebec, and for urban attendance from 56.5 per cent in Alberta to 34 per cent in Quebec.

That illustrates, we think, the inequality.

COMMISSIONER DAFOE: That is apparently explained by the fact there are no ^{secondary} schools to which they can go.

MR. NOSEWORTHY: They have not the opportunity. The point we are making is that rural pupils in Canada today have no opportunities at all comparable to the opportunities afforded in urban communities.

COMMISSIONER DAFOE: They could not be given those opportunities unless they could move away from the school area into town. You do not suggest there should be secondary schools everywhere in the rural districts?

MR. NOSEWORTHY: We think that if funds were available from either provincial or federal sources much more could be done for these people, as is being done, for instance, in the Peace River District in British Columbia. The experiment there, we think, has to a large extent met that need. We believe it is not an insuperable task to provide these people with opportunity if funds could be made available.

COMMISSIONER DAFOE: THAT is tied up with the consolidated school idea, which, of course, is making very little headway in western Canada.

MR. TITUS: Mr. Dafoe, not altogether in the province of Saskatchewan, for instance. It is hardly a provincial matter, of course. We are suggesting the organization of the rural schools into what we call larger administration units consisting of 65 present school districts, which would make possible the reorganization and establishment in villages where village

schools now exist, or more populous rural areas, of secondary schools whose pupils might be drawn up from the rural school into the small secondary school. I think that could be done without the necessity of the consolidation of schools as it is ordinarily understood;

MISS NORRIS: May I interject this remark? There is another scheme that is being used in some places, and that is a travelling teacher going to the smaller schools and being shared by several schools. This teacher spends, one, two or three days in each school area, of whatever time is required. In Scotland this difficulty has been met by building hostels for rural pupils and providing transportation for rural pupils. We find that in many places. Again, we have no figures, because we have no bureau to collect them; but we find in many places there is an extra fee charged for non resident pupils, which, of course, is a handicap to rural children. We find that the better high schools and vocational schools in the larger centers are so situated that the children may have to travel several miles and that entails added cost for transportation.

There are many ways, we think, in which this may be met but, of course, it entails extra expense, and when we consider that half the population of Canada resides in the country or in areas of less than 5000 population it becomes a very serious problem. This information is gleaned from the analysis of the censuses. This problem is also closely interwoven with the trek city-wards, which I think is causing some uneasiness to our authorities on economics and so on.

MR. NOSEWORTHY: The matter of fees is dealt with rather briefly on page 9. We state:

FEES IN ELEMENTARY AND SECONDARY
SCHOOLS

"Much as we boast about free education in Canada, the fact remains that for large numbers of school children education is not free. For elementary education free opportunity is offered by all the provinces except Quebec, where fees of from five to fifty cents per pupil per month are required in many schools outside of the Island of Montreal. For secondary education fees are charged regularly to all pupils in Prince Edward Island and Quebec, while fees may be, and many instances are, charged to pupils of grades XI and XII in New Brunswick and to Senior Matriculants in British Columbia. Fees are still paid by secondary school pupils writing examinations in all provinces except Ontario

(Page 2700 follows)

I think I should add in fairness to the provinces that when I speak of examinations in this connection I mean the final matriculation examinations and not the school examinations. I received a letter from the ~~Department of Education in New Brunswick~~ calling attention to the fact that the only fees paid there, and in most of the provinces, are fees for the final secondary school examination.

We find for instance that British Columbia collected in 1935 the sum of \$28,000 in fees for examination certificates; the school districts in Alberta received a total of \$118,000 from pupils for the same year; ~~Saskatchewan school districts~~ received fees to the net amount of \$71,000. So that we may not consider elementary and secondary education as being entirely free yet.

Concerning vocational education, we thought that this would be a matter of particular interest to the Commission in view of what has been done by the federal government for vocational training. A few illustrations will be useful.

We have not the figures for all the provinces, but I believe I can state the situation pretty clearly when I make this statement: In Nova Scotia, where the rural and urban boys are almost the same in number -- 5,900 and 5,800 -- we find that only 75 rural boys are taking manual training as compared with 2,714 urban boys who are doing so.

Of the girls in attendance in grades 7 to 9, which are the last two years of public school education, -- the numbers being respectively 6,700 and 6,400 -- only 135 of the 6,700 rural girls are taking domestic science.

THE CHAIRMAN: What is the distinction between vocational education and manual training? Are the manual

training classes in the vocational school?

MR. NOSEWORTHY: Manual training classes are really vocational classes of the elementary school; that is the type of vocational training that is given in the elementary schools. Manual training is given to boys and domestic science to girls.

We have the figures collected by the teachers of Manitoba and they show that while in the cities all secondary grades and all grades 7 and 8, elementary, receive manual training and domestic science, only two town schools have this advantage, while no rural schools enjoy it.

THE CHAIRMAN: Where does that appear?

MR. NOSEWORTHY: I am quoting from the table at the foot of page 9, where the figures are given with reference to Manitoba.

THE CHAIRMAN: It is not necessary to go through all the details in reference to each of the provinces. Inasmuch as we shall be reading the brief, it will serve the purpose, Mr. Noseworthy, if you illustrate your point in a general way.

MR. NOSEWORTHY: What we wanted to emphasize, Mr. Chairman, is the fact that the rural pupils to-day are not getting very much in the way of vocational education. As a matter of fact, the picture we have drawn here appears to be much brighter than it really is, because it has been impossible to separate the number of those attending night school vocational classes from those attending day schools; and in our figures for some of the provinces, which we give in the table on page 10, the percentage includes those in attendance at night schools as well as those who go to the day schools.

It will be seen therefore that the actual day school attendance in the vocational schools is much less than this table indicates; at least, it would appear much less if the figures were available.

Next we call attention to the top of the second column on page 10, where we indicate the extent to which education in Canada is borne by the municipalities. We show the percentage of school revenue received from provincial governments -- that is, the actual amount paid by the provincial governments in support of publicly controlled elementary and secondary schools, ranging from 5.7 per cent in Quebec to 28 and 54.2 in British Columbia and Prince Edward Island respectively. Perhaps I might call attention at this point to the situation that exists to-day in Saskatchewan.

THE CHAIRMAN: I should like to make this suggestion, Mr. Noseworthy. We wish you to take all the time necessary, but I must point out that there are two other groups here to-day and I have received word that they cannot be present to-morrow. Do you think it would be possible for you to give us the essential points in your submission before 1 o'clock?

MR. NOSEWORTHY: Yes Mr. Chairman. We will limit ourselves to any time that you may fix.

THE CHAIRMAN: This is a very important matter and we want you to take all the time necessary, but we must also consider the others who have come here to make representations and, as I say, I have received a note intimating that they cannot be here to-morrow.

MR. NOSEWORTHY: I think we can get through by 1 o'clock. I wish to call attention to the fact that the provincial support in Saskatchewan, which is given in the table at the top of the second column at page 10

as 21.1 per cent is the estimated rather than the actual expenditure. As a matter of fact, the money that is actually paid in Saskatchewan represents a percentage of 15.2 instead of 21. Last year about \$2,000,000 less was actually spent on education than was budgeted for by the different school boards.

These figures are based on the amount that was included in the budgets rather than the amount that was actually spent. The figure for the province of Saskatchewan would be probably 15.2 per cent; that would more nearly approximate the actual expenditure.

In contrast to that we have given a table to show what is being done in other parts of the Empire and in Europe. We show that whereas in Canada our percentage of centralized support is very low, in England and Wales it is 52 per cent. In Scotland it is 57 per cent, in North Ireland, 82 per cent; in the Union of South Africa, 75 per cent, the national and provincial together accounting for anywhere from 91 to 99 per cent, the balance being made up largely by fees. As far as Australia is concerned, the 100 per cent given in the table should be moved over under the second column, under the heading State or Province. In that dominion the state supports 100 per cent the cost of education. We give the percentages also for Sweden, Norway and France.

We call attention, further, to the fact that steps are being taken and have been taken in our neighbouring country the United States whereby the federal government is coming to the assistance on a large scale of the states and the municipalities.

We direct attention to the Harrison Black-Fletcher Bill now before Congress. That national legislature is now considering provision for an initial payment of

\$100,000,000 to be increased by \$50,000,000 each year until in the fifth year and thereafter \$300,000,000 will be provided. You will find that set out at the top of page 11 in the left hand corner.

We are of the opinion that the more progressive states within the Union have within the last few years undertaken to support a much larger percentage of the cost of education from state funds than has been the case heretofore.

I should like to read the second complete paragraph in the first column on page 11:

" We presume that this Commission in its travels over Canada will receive many representations protesting against the very heavy burden borne by taxation on real estate. About a third of this burden is due to the necessity of raising locally funds to pay for public education. The remedy is obvious. By increasing provincial grants for education a large part of the burden of real estate taxes may be lifted. By apportioning these grants in accordance with need, equalization of educational opportunity between poor and rich communities can be effected.

We therefore strongly commend to the consideration of this Commission the proposal that the dominion government make larger financial grants to the provinces, and that a portion of these grants be specifically earmarked as in aid of education. Further, subsidies for education should be passed on to the local communities in increased provincial grants. We are also of the opinion that if the dominion does find it possible to make such grants, the provinces cannot reasonably object to

"a certain amount of dominion supervision and audit of the expenditure of its funds. We propose now to deal specifically with various possibilities in the granting of these subsidies."

We do not want the provincial governments to receive money from the federal government and spend it for purposes other than education.

COMMISSIONER ANGUS: I can see the point of that, but it deprives the provincial government of the choice it would otherwise have between the importance or urgency of different purposes, in the sense that it substitutes the dominion's judgement for the provincial government's.

MR. NOSEEWORTHY: Our point is that education is of sufficient national importance to warrant the dominion government in specifically earmarking certain of these grants for education, though not necessarily for any particular type of education, which we think could be better left to the province. We have dealt at some length with the question of dominion subsidies for education and I think I can pass over that and move on to page 13 where we summarize. I should like to read a portion of the submission from the foot of page 13. We have set forth three problems in relation to the granting of subsidies. I quote:

" By conditional grants in this brief we mean grants earmarked for education or special educational services such as agricultural and technical education. The chief problems in the use of such grants are:

Whether or not the grants should vary according to the wealth of the provinces;

2. Whether or not it should be required that the provinces raise amounts in some proportion to

"the federal grant (for example, the technical education grants required that the provinces match the federal grant dollar for dollar);

3. What degree of dominion supervision should accompany these grants.

With regard to the first problem our view is that it is desirable that the grants should be varied according to provincial need if possible. Mere population grants do, of course, effect some degree of equalization, but in order to give any considerable assistance to the poor provinces, large sums have to be granted to the wealthy provinces. If it were possible to take financial capacity into account, a small sum could do as much good as a much larger sum distributed only on a population basis. The difficulty, of course, lies in the accurate measurement of the financial abilities of the provinces. A promising suggestion, advanced by Professor Keirstead, is to use the per capita assessment for federal income tax for this purpose."

As regards the basis of need, we suggest on page 10 that possibly the English system might be introduced, though it is a rather complicated one. Under that system what is known as the weight of population is used; grants made to English counties are given on what is called the basis of weight of population, the need of the county being taken into consideration in conjunction with the number of people within the county. Or, as an alternative to that, we suggest that the dominion assessment for income tax might very well be taken as the basis.

We are simply suggesting these two methods; we are not attempting to lay down the principle that should govern in determining provincial need.

I refer the Commission now to the second column on page 13 as follows:

" As regards the second problem, it is clear that the requiring of a provincial contribution to a service works a hardship on the poorer provinces. Thus, only after the dominion grant for old-age pension was increased from 50 to 75 per cent were the maritime provinces able to put old age pension systems into operation.

Much the same is true of the technical instruction grants. Some provinces earned their federal aid with ease, while others had substantial unearned balances when the act expired, and it was necessary to allow those provinces more time.

It is clear, however, that if the provinces are to administer the services, there is reason to fear extravagance unless they have some financial responsibility. For this reason, it may be that the administration of some of the social services should sooner or later be transferred to the dominion."

That may be one of the means of easing provincial burdens and providing funds for education, if a federal grant is found to be impossible. I come now to the third problem:

" The third problem, that of the conditions under which educational subsidies should be made and the amount of supervision which should accompany them, is of course an exceedingly delicate

"one, for it is abundantly evident that the dominion cannot exercise any control over the country's school systems. We think the following proposals are reasonable:

1. That the federal subsidies should be primarily for the purpose of equalizing school services and costs throughout Canada;
2. That accordingly any federal subsidies received should be passed on to the local communities in increased provincial grants;
3. That therefore the federal government should guard against the possibility of the provinces merely reducing their own grants by the amount of the federal subsidy, by making this subsidy conditional on the provinces not reducing their grants for education."

COMMISSIONER ANGUS: You realize, of course, that that practically deprives the province of any control over the amount it expends; it may raise the amount, but can never lower it, whatever the services may be.

MR. NOSEWORTHY: But the service itself is national in character. Even if the province were prevented from reducing the expenditure, one must not lose sight of the fact that the service is a national one.

COMMISSIONER ANGUS: That assumes that you are completely anti-democratic, that you do not wish the people of the province to have control over their own expenditures.

MR. NOSEWORTHY: We believe, on the contrary, that the very basis of democracy is some form of equality of opportunity in education.

COMMISSIONER ANGUS: You want to protect the people against themselves?

MR. NOSEWORTHY: Against their provincial governments.

THE CHAIRMAN: We cannot undertake to do that.

MR. NOSEWORTHY: To continue that quotation:

"4. And that the federal government should reserve the right of making such examination of provincial accounts as will satisfy it that this rule has been adhered to."

We are thinking now of the grant made for education; we are not thinking of any ordinary provincial grant.

COMMISSIONER SIROIS: Do you think that would be acceptable to the provinces?

MR. NOSEWORTHY: We are suggesting it. Actually, we are of the opinion that much better public service would have been rendered by the \$20,000,000 that was spent on agricultural and technical education if the dominion government had attached some strings to the granting of that money. That \$20,000,000 -- certainly the \$10,000,000 granted to the technical schools -- went almost entirely to the cities and large towns. The rural communities received a very small proportion of that \$10,000,000 simply because the province was left to handle the matter entirely.

COMMISSIONER DAFOE: You think that these special grants should carry reasonable conditions of inspection?

MR. NOSEWORTHY: Yes, to see that they are spent for the purpose intended.

MISS NORRIS: When you speak of inspection, you mean inspection of accounts.

MR. NOSEWORTHY: Yes, inspection of accounts, inspection of the money granted by the federal government.

COMMISSIONER ANGUS: The inspection would be also for the purpose of making sure that the province

did not reduce existing expenditures in any way. Is that your idea?

MR. NOSEWORTHY: Yes. There would be no point in the federal government handing over so many million dollars to the provinces for education only to have the provinces take the money which they are at present spending on education and spend it on something else. We want education to benefit by any relief the provinces receive -- to some extent at any rate.

THE CHAIRMAN: You are thinking of the relief of education, not of the relief of provincial finances.

MR. NOSEWORTHY: This concerns education.

COMMISSIONER DAFOE: There would be various ways of meeting that situation. A reduction in provincial grants would be accompanied by a proportionate reduction on the part of the dominion. There would have to be some safeguards.

MR. NOSEWORTHY: It is a difficulty that must be kept in view. I think I can content myself with reading the last long paragraph in the second column on page 14, which concludes Part 1 of the submission. It reads:

"As already mentioned, there are three indirect ways in which financial help may be given to education by the dominion government: ((1) By substantial dominion subsidies to the provinces in aid of education -- not an entirely new departure, considering grants of recent years under the Agricultural Instruction Act and Technical Education Act; (2) By the dominion granting to the provinces additional sources of public revenue; (3) By the dominion taking responsibility, for certain services, such as public health so that the provinces would

"be able to allocate more of their present revenues to the service of the school.

While the latter two would have the effect of making it easier for provincial governments to spend more on education, we have no assurance that the funds thereby levied or released would be spent on education. Other provincial claims may quite possibly be given precedence over education, which may continue to be the financial responsibility of small school sections and municipalities. It is for this reason that we favour substantial dominion subsidies definitely earmarked for education, though not for any specific educational service, and granted on some basis of provincial need, and on such conditions as will prevent the provinces from reducing their present contributions to educational costs. Because we consider that education is in reality a matter of great national importance, we most strongly urge this Commission to take steps to ensure that education receives more centralized financial support."

That is our main argument; the supplement I can pass over fairly rapidly. I think I can dispose of it pretty well in the half hour that is left.

In the supplement we call attention to some 10 or 12 special educational services which are now being rendered in some form by the dominion government and in connection with which we ask -- in addition to the general subsidy -- an extension of service.

There is already in existence the educational statistics and research bureau. Our chief concern in this regard is that the services of that bureau be extended

and that there be set up in Canada a national research council for social sciences, just as there exists at the present time a research council for the physical sciences. We feel that the social sciences are of equal importance to the life of the nation as the physical sciences.

The laboratory of the social sciences will naturally be the Dominion Bureau of Statistics, but we have a suggestion to offer in the second column on page 15 of our submission. We say:

" The teachers' concern is particularly with one branch of the social sciences -- education -- but they are in some measure concerned with them all. One of the main subject groups in every modern high school curriculum is the social science group, and teaching in it is as wide as the range of the Dominion Bureau of Statistics. Hence, teachers would be within the bounds of propriety in asking for serious consideration of the formation of a national council for research these branches of knowledge among which the science of education is one of the most important."

We are asking that there be associate committees to direct the broad policies of research in the various subdivisions, just as there are at present committees in connection with the National Research Council.

We go on to point out that there should be scholarships granted to university graduates, post graduate scholarships for research into the social sciences, as there are at present post graduate scholarships for research into the physical sciences. This matter of the extension of the services of the Dominion Bureau of Statistics deserves more time and emphasis than I can possibly give to it this morning.

Educators throughout every province derive great benefit from the present services of the dominion bureau, and we are very anxious that funds should be available to enable that bureau to extend these services. Whether a social research council can be set up or not, we think that a good deal could be done by increasing the grants to the present dominion bureau.

We call attention to the need of matriculation scholarships. This matter was before the House of Commons last year, and teachers throughout the country were delighted with the reception accorded the proposal. We simply call attention to the fact that there are great numbers of our young men who matriculate and are unable to enter university. Present scholarships do not adequately meet the need.

Many of our best and most intelligent boys and girls, who would be great assets to the nation, are simply not receiving university training. On the other hand, our universities are training largely those who are fortunate enough to possess the means of attending, provided they can manage to get through matriculation examinations in anywhere from five to ten years.

COMMISSIONER ANGUS: Do you approve of unconditional scholarships, or scholarships on the basis of the means test?

MR. NOSEWORTHY: We believe that scholarships should be on some basis of need. It is the needy pupil, the intelligent and capable but needy pupil, who ought to receive public support in the matter of education.

THE CHAIRMAN: Would you not suggest that men of means be encouraged to provide our universities with these scholarships so far as they are necessary? We cannot

expect our governments to do everything for the people.

MR. NOSEWORTHY: But in themeantime, while we are trying to persuade these men of means to do something, there are thousands of our intelligent boys and girls who are not getting university training; and they will not get it so long as the matter is left to private beneficence. I do not think there is any possibility of ever getting private individuals to contribute the necessary amount.

THE CHAIRMAN: Is it not a fact that thousands of our best men have worked their way through college?

MR. NOSEWORTHY: I am rather inclined to think that that was easier some years ago than it is at the present time. I am not quite sure that I would want to work my way through college now. Though it was possible at the time I went through college, I would hesitate to say that a boy or girl can work his or her way through college to-day. Certainly it cannot be done as easily as it could be done 25 years ago.

THE CHAIRMAN: If he has the real stuff in him, won't he make his way anyhow?

MR. NOSEWORTHY: I have known, sir, in my classes many boys who had some really good stuff in them but they never got past the high school. They would have made excellent contributions to the public life of the country, but they never had the opportunity.

COMMISSIONER DAFOE: Are all those who have been unfortunate enough not to have gone through universities been uniform failures? Do not some of them score notwithstanding the handicap of want of university training?

MR. NOSEWORTHY: I have no doubt they will score, but I doubt whether they will score as high as they would have done had they had the advantage of university

education. I think it is rather unfortunate that the best brains of the country should not be encouraged to carry on their educational efforts past high school. It is a real national loss.

THE CHAIRMAN: There are a good many scholarships now, and almost every year the number is increasing. I know that Toronto in the last four or five years has increased the number of scholarships quite appreciably.

MR. NOSEWORTHY: But not in comparison with what is being done in other parts of the Empire -- in England for example. We have not begun to take care of our intelligent but needy boys and girls.

COMMISSIONER DAFOE: From what source do British scholarships come?

MR. NOSEWORTHY: From the national treasury to a large extent. There the intelligent but needy boy is not only given the amount necessary for his fees; he is maintained and in some cases, if necessary, his family is reimbursed to the extent of the loss of his earning power while he is at the university. In England they realize the importance of training intelligent boys and girls, so much so that they are willing in many cases to reimburse the family for the loss of the boy's earning power in order that he may receive his education.

COMMISSIONER DAFOE: Is it determined by competitive examination?

MR. NOSEWORTHY: Yes, and the need of the pupil. European countries to-day are of course doing the same thing on a much greater scale. I do think that there is a real national loss to Canada unless something of this nature is undertaken.

THE CHAIRMAN: Of course, we all welcome every advance made, and so far as the provision of scholarships

is concerned, one would like to see many more granted. But is it a matter of such urgent public importance? Have the scholarship men proved to be so superior to others that one can say that the national investment in providing for their education has been a particularly great asset? I do not know; I am simply putting the question. Take the Rhodes scholarship. It would of course be invidious to speak of our own Canadian Rhodes scholars but one may refer to those living at a greater distance. I have heard it said that in some other countries they have not made that distinct contribution to the national life in its broader aspects which it was hoped that these scholarships would promote when they were established. I do not know; I have no knowledge myself on that point, but I question whether national scholarships are of that vital importance that you apparently attach to them.

MR. NOSEWORTHY: Would you, for a moment, sir, question this statement, that an intelligent boy could make a more substantial contribution to the wellbeing of society if he were given the privilege of university training than he can, going out into the world without that equipment?

THE CHAIRMAN: I think he could, though I am not so sure that he would.

MISS NORISS: May I answer your question, Mr. Chairman? If you will look over the list of our prominent men you will find that about 99 per cent of them have had university education. Inferentially, therefore, university education must be of value. Nor must we lose sight of the fact that, in the great universities of Oxford and Cambridge, which heretofore have been regarded as rather exclusive, over one-third of the students are going through on

scholarships. If you were a young man going out to seek a position -- I know it is true in Montreal -- you would find that a great many positions are available but only to students who have graduated from universities. In other words, university training is becoming more and more the requirement. In New Zealand, with a population of only a million and a quarter, the government in the last ten years has awarded 1,000 scholarships valued at from \$250 to \$300 a year. I am almost ashamed to say what our Canadian scholarships are worth. We have only about 500 scholarships in Canada; the number is increasing, but the last statistics show only about 500; and they are valued at about \$150 each. We are very far behind other countries. One of the efforts made in the United States recently to cope with present day conditions has been to grant maintenance scholarships right across the country. They vary from about \$8 a week to \$20 a week. They help to pay board and transportation or to buy books. Japan too has made enormous strides recently -- we do not like to think of the strides that country has made in certain directions. The Japanese government for a number of years has been practically paying all the expenses of between 300 and 400 Japanese students who go to other countries, where they are maintained for a period of three years. They do not come to Canada. What is the matter with our educational system that we do not attract foreign students? We attract a few from the United States and the West Indies, but generally speaking foreign students do not come to Canada to study. There must be a reason.

THE CHAIRMAN: Of course, our scholarships have nothing to do with that; it must be that our universities do not attract them. If that is the case, I should not like to think, however, that our universities

were not indeed excellent -- not comparable, perhaps, with the older universities, but of high standing.

COMMISSIONER ANGUS: Is it not a fact that some of these countries to which you have referred have specialized, so to speak, in helping the elite of the population, paying less attention than we have paid to the rank and file ? The tendency on this continent until recently has been to do as much as possible for the rank and file and to leave the elite to take care of themselves, on the assumption that they will succeed in any event. Have you any opinion to offer on the alternative methods of reducing fees for all, on the one hand, and on the other of concentrating on maintenance scholarships for the best students?

MR. NOSEWORTHY: My opinion would be that certainly some method should be devised whereby the highly intelligent pupil can be given the opportunity of receiving university training. I do not suggest exactly how that should be done. Our scholarships are so few that they have very little bearing on the situation. I am not in a position to suggest that the fees of the general body of students should be raised in order that a few intelligent but needy students should be given a chance. As we see it, however, there is a distinct national loss at the present time. We find in the secondary schools that a great many young people, promising boys, have not been able to complete their school course because of economic pressure at home. We made a study of the suburban schools surrounding Toronto -- some large secondary schools in that vicinity-- and we found that of the boys who achieved first class honours standing in their first year at high school, fifty per cent had to drop out, or were practically forced to discontinue their studies, because of economic pressure.

They had to discontinue before they had completed their high school course. That situation we believe is general throughout the country. The very brightest of our boys -- the percentage of girls is not so high -- who enter high school are unable to continue to the end of the secondary school course, because most of them have to drop out to take positions. We communicated with every one of these students to find out why he had not continued and we found that practically 100 per cent of them would have remained and finished their high school education had their families been in a position to keep them and had not required their assistance.

In the matter of libraries, we make a suggestion at the foot of page 16 as follows:

" All authorities on library work are agreed that we need in Canada an institution such as the National Library in England. We have a National Gallery and a National Museum but no National Library. Such a library would serve to coordinate the various libraries of the dominion government, and make readily accessible to students as well as to government staffs, all the book resources of the national government. It would serve as a central library which would make available to educators and schools the voluminous material now prepared by government departments, and which for the most part remains unknown, except to comparatively few people. We doubt very much if even the officials of the Bureau of Statistics have any means of knowing just what the book resources of the various departments of the dominion are.

This need of a National Library is the subject

"of a chapter in the Ridington report. In their conclusion of that chapter, the Commissions say 'If these leaders (Hon. R.B.Bennett and Hon. W.L.Mackenzie King) and a few other representative Canadians would agree as a non-political national policy to inaugurate, establish and finance a Canadian National Library, it would be a step in harmony with the times.' England, Germany, France, Czecho-Slovakia, and the United States already have national libraries -- Canada ought to have one."

In that connection, we feel that a national library would be of assistance to the library systems throughout the country. Statistics show that in Nova Scotia 74 per cent of the people have no access to public libraries; in Quebec, 64 per cent; in Ontario 37 per cent; in Manitoba 62 per cent; in Saskatchewan 82 per cent.

With the exception of Ontario and British Columbia, over 50 per cent of the people in each of the provinces are without the use of public libraries at all.

THE CHAIRMAN: Are there no quasi public libraries in the cities of these provinces? Has not Halifax, for example, some form of public library?

MR. NOSEWORTHY: In the larger centres you will find public libraries, but 50 per cent of the people live in rural areas.

THE CHAIRMAN: Could not the governments of these provinces arrange with the public libraries to make books available to the rural residents?

MR. NOSEWORTHY: If the dominion government will relieve the pressure on the provinces I have no doubt they will find funds for that purpose

THE CHAIRMAN: It would certainly be much more convenient to consult books in nearby libraries than to communicate with a national library.

MR. NOSEWORTHY: We feel that the national library has played a great part in the library systems of other countries. It would serve as a centre from which all the provincial and local libraries might obtain expensive types of books that are not kept locally. It would serve as a clearing house for the library systems in the province. Some central organization is unquestionably needed in Ottawa.

THE CHAIRMAN: If you will simply touch on the other points in your submission, we will read the whole brief.

MR. NOSEWORTHY: In the matter of vocational guidance we have a suggestion to make which you will find on page 17. In the second column on that page we make this statement:

"Vocational guidance for the young people concerned is an integral part of this programme, and such guidance could be extended, through the medium of the Dominion Employment Service, to the students in the schools."

We have pointed out that in Great Britain the employment offices have personnel trained in guidance, who do not wait for the young people to come to them, but go right into the schools, giving boys and girls information and advice on choice of vocation, and discussing prospects with the parents. We suggest that in Canada only a federal bureau is capable of surveying the entire field of employment, that no provincial organization can survey that field adequately. Inasmuch as industry and commerce are interprovincial, if boys and girls are to be trained

to fit into jobs where they exist, that can best be done through a central bureau.

In the matter of broadcasting we make a recommendation on page 18. We suggest that there should be either a central council for school broadcasting, or that provincial councils should be set up to cooperate with the Canadian Broadcasting Corporation in an effort to provide something that can be carried into the schools in the way of educational broadcasting.

THE CHAIRMAN: Is not that something that your association should take up direct with the Canadian Broadcasting Commission? It is a matter that does not depend upon jurisdiction; it is a question of policy on the part of the broadcasting corporation.

MR. NOSEWORTHY: I realize that, but this recommendation was passed upon by the Canadian Teachers' Federation and we are suggesting that a recommendation from this Commission might lend support to us and other educators in our endeavour to direct attention to this need. It is very difficult to get some dominion government organizations to swing into line.

MISS NORRIS: I understand that an offer has been made to experiment in school broadcasting. It has been made to the provinces, but the Canadian Broadcasting Corporation, in the requirements of the type of program that should be sent out, have set a standard which the present funds at the disposal of the provinces are unable to meet. If we could have more money we might be able to institute a program which would enable us to carry out a real experiment.

THE CHAIRMAN: We all need more money.

MR. NOSEWORTHY: As regards motion pictures, our recommendations are given in the first column of page 19,

paragraph 2. There are three very definite steps which the federal government might take to provide motion pictures for the schools.

THE CHAIRMAN: If it is only a matter of administration, that should be taken up with the federal government. This Commission, with the multiplicity of matters it must consider, matters that are of fundamental importance, cannot undertake to discuss with departments of the federal government or with the provincial governments questions of administration that do not involve duplication or overlapping. Where a matter is directly one of administration we cannot undertake to deal with it; it should be dealt with directly through the department concerned.

MR. NOSEWORTHY: Our purpose in coming here was to approach the federal government, if possible, through this Commission. We may have been in error in that.

THE CHAIRMAN: We cannot do everything.

MR. NOSEWORTHY: On page 20 I have given a statement which I think summarizes pretty clearly the contents of the brief, and I will leave it with the Commission.

THE CHAIRMAN: Very well. For the sake of the record, the reporter might put that summary in so that it will appear at the conclusion of your observations. Have you any questions which you would like to ask, Mr. Stewart?

MR. STEWART: I am afraid it would take some time for Mr. Noseworthy to answer the questions which I should like to put to him.

THE CHAIRMAN: Will you be back to-morrow Mr. Noseworthy?

MR. NOSEWORTHY: If there are other organizations that cannot come here to-morrow, and if it is necessary

that we should come again to-morrow, we can do so.
Perhaps that will be more convenient for the Commission.

THE CHAIRMAN: Perhaps you would not mind waiting until the conclusion of to-day's hearing. We might be able to hear you then. There are however other organizations that have to be heard, and they cannot be here to-morrow. If it is possible, we shall be glad to go on with you this afternoon.

MR. NOSEWORTHY: We can wait until to-morrow if necessary. I will now hand in the summary without reading it.

The summary follows:

" In summarizing this brief, we, the Canadian Teachers' Federation, submit the following recommendations:

1. The extension of present governmental educational services to include:

(1) An extension of the work now being done by the Educational Branch of the Dominion Bureau of Statistics.

(2) Consideration of the establishment of a National Bureau for research in the social sciences.

(3) The establishment of scholarships for:

(a) post-graduate work in education and other social sciences.

(b) secondary school graduates proceeding to university.

(c) secondary school students who have demonstrated marked ability in the lower forms.

(4) An extension of the dominion government's guidance programme through the Dominion Employment Service in cooperation with the provincial

" Departments of Education to the students in the schools.

(5) The establishment of a Central National Library to coordinate existing departmental libraries and to make available to schools at nominal costs the government publications now unavailable.

(6) A programme of broadcasts suitable for audition in schools.

(7) An extension of facilities for the showing of films of educational value.

(8) An extension of the facilities whereby schools may be able to obtain at nominal costs, museum photographs and reproductions of exhibits in the National Museum and National Gallery.

(9) A programme of teacher training in the broader aspects of health and physical education.

(10) The establishment of a Canadian Committee for International Intellectual Cooperation.

II. A federal subsidy specifically for education, to be paid to the provinces on a basis of need, and of such dimensions as will ensure an equality of opportunity to all Canadian youths proportionate with their natural endowment; or in the event of that being found impossible, that federal aid be given the provinces in the form of relief from their present expenditure on social services, national in scope, in order that provincial governments may be in a position to bear a much larger proportion of the cost of education. In either case we urge that relief be given on the basis of provincial need, and that definite agreements be undertaken to ensure that the

" burden of educational costs be shifted from local municipalities to provincial governments, in order that educational opportunity may be more nearly equalized throughout the provinces and the dominion."

EXHIBIT NO. 97: Brief presented by the
Canadian Teachers' Federation.

(At one o'clock the Commission
took recess.)

Page 2730 follows.

AFTERNOON SESSION

The Commission resumed at 2.30 p.m.

THE CHAIRMAN: The first Brief on our list this afternoon is that of the Ontario Association of Real Estate Boards.

MR. F. KENT HAMILTON, General Counsel for the Ontario Association of Real Estate Boards, was called.

SUBMISSION BY

ONTARIO ASSOCIATION OF REAL ESTATE BOARDS

MR. HAMILTON: Mr. Chairman and Members of the Commission, I appear on behalf of the Association, and associated with me are Mr. W. H. Bosley, President of the Association, and Mr. John B. Laidlaw, Executive Secretary.

I think it might be well, Mr. Chairman, for me to read the Brief. It is not long. We have tried to be as concise as possible, having in mind the tremendous importance of real estate in the general economic set-up of Canada:

"The Ontario Association of Real Estate Boards is composed of member Boards in Toronto, Hamilton, Ottawa, Windsor, London, the Niagara District, Kitchener, Waterloo, Brantford and Chatham and has affiliate members from numerous smaller centres, not large enough to justify the formation of a Board."

THE CHAIRMAN: That is, Toronto and western Ontario. Is there any reason why it does not extend to the east, Mr. Hamilton?

MR. HAMILTON: No particular reason, Mr. Chairman, except that there are not very many large centres there with a sufficient number of men actively engaged in real estate to justify the formation of a local board.

"The members of the Ontario Association of Real Estate Boards are actively engaged in the buying, selling and leasing of homes, business properties and farm lands and the management and appraisal of properties and are closely in touch with new construction and its financing.

The practical experience of our members especially qualifies them to speak on behalf of the owners of real estate. They have seen the actual effect on its values caused by a continually increasing tax rate, often coupled with increased assessments. They have seen high taxation causing serious impairment of values. It can be safely said of them, that they know the viewpoint of the home owner and the investor in real estate, who as an individual citizen, has ample grounds for criticism of the three great taxing bodies in Canada. You will note we say "three taxing bodies" and not two because until recent years we can justifiably conclude that the tremendous burden of taxation on real estate was almost entirely overlooked both by the Dominion and provincial governments in their scheme of financing.

The provinces have steadily widened the responsibilities of the municipalities, more especially the urban municipalities, but have left the municipalities with only one substantial source of revenue, namely, that of taxation on real estate.

We realize that your commission appointed by the Dominion government is primarily con-

"cerned with ways and means of adjusting affairs between the provinces and the Dominion. We further realize that on many matters on which real estate has to complain it is more a problem for the provinces than the Dominion, but the vital principle of coordinating the total tax burden upon our citizens with a view to its more equitable distribution calls for representations on the part of property owners and the presentation of existing conditions as affecting real estate if the whole picture is to be before you and thereby help you in your recommendations.

It is our submission and is now generally conceded that real estate has been for years bearing more than its fair share of the tax burden and the effect of this high taxation has been to discourage home ownership, to retard construction, to impair real estate as an investment, to cause agitation for government subsidies for housing and to create an artificial method of assessment not founded on basic economic principles.

The presentation of the viewpoint of the property owner can not be safely left to the municipality nor to the provinces mainly because the franchise in the municipality is not limited to the property owner although he is called upon to pay directly about ninety per cent of municipal taxes."

As an illustration of that, Mr. Chairman, it is quite interesting to note that in the last municipal election in Toronto, there was a Slum Clearance by-law, upon which only the property owners were entitled to vote.

The number of electors voting for the Mayor and Board of Control and Aldermen was approximately 114,000 people, while on the Slum Clearance by-law only 52,000 votes were cast out of a total of 114,000, showing that there were 62,000 non-property owners voting, as against 52,000 property owners.

Now I continue at page 4 of the Brief:

"The financial structure of our municipalities is now based upon the value of property; their revenues are mainly derived from property, and their bonded indebtedness is related to the total value of property within their borders.

The present system of Assessment and Taxation is not only destroying the value of property but also weakening the financial basis of our municipalities.

The more important matters which we feel should be drawn to your attention are as follows:--

1. Relief
2. Income Tax
3. Subsidizing home construction

We place these three at the head of the list because the Dominion has become involved more or less either with the provinces or the municipalities in these matters.

We think it advisable to discuss also

4. Assessments
5. Education
6. Hospitals
7. Social Services
8. Contribution of revenue from automobile

"and gasoline taxes

9. Control of municipal capital expenditure.

We respectfully submit:--

Firstly: Relief either for the unemployed or the unemployable should not in whole or in part be collected out of real estate.

Secondly: Persons liable to income tax should be entitled to a set-off against income tax of the full amount of taxes paid upon real estate."

THE CHAIRMAN: You discuss these principles later, do you?

MR. HAMILTON: Yes, Mr. Chairman. Continuing with the Brief:

"Thirdly: Government subsidies or government participation in house financing is not necessary or advisable. It is unwise to cure one evil with another. The major operation required for a cure of alleged housing shortage is to remove the cancer of excessive taxation.

Fourthly: Secondary education in all its forms should be furnished at the cost of the central governments and not be borne by real estate or the municipalities.

Fifthly: Hospitals do not limit their services to the boundaries of the urban centres in which they are located but serve the entire surrounding area. Therefore, we submit, they should be maintained or more liberally supported by the central jurisdiction rather than locally.

Sixthly: All cities and towns should have a share in the revenues collected from automobiles to meet the necessary expenses

"incurred by these municipalities in servicing the automobile."

THE CHAIRMAN: Do you mean highway construction?

MR. HAMILTON: Yes, Mr. Chairman. I go into that later and illustrate the principle that we think should apply. Continuing with the Brief:

"Seventhly: The privilege of issuing debentures by municipalities should be limited by statute to permanent capital improvements and more rigid over-all limitations should be placed on their borrowing powers.

In discussing this problem we must admit--

Firstly: ~~That the~~ perfectly fair system of taxation is yet to be discovered.

Secondly: That real estate by reason of its very nature will always be the target for taxes. It is too tangible ever to be ~~overlooked by the tax gatherer. It can not be hidden in the vault-box or moved out of the jurisdiction.~~

Thirdly: But there is a limit beyond which taxation becomes confiscation in whole or in part. Once a tax becomes confiscatory in its nature or quantity then the very value on which the tax is based dissolves in exact ratio to the whole or partial confiscation.

The acid test of whether our taxation system is fair or unfair is its effect on the individual citizen--not a citizen of Toronto, Montreal or Winnipeg--not a citizen of Ontario, but as a citizen of Canada.

If, as the result of the lack of coordination among the various taxing authorities, glaring defects appear which have the effect

"of taxing one citizen, the owner of real estate, many times more than another citizen, the owner of other types of property, then these defects, we submit, should and must be remedied.

Real estate taxation by the municipality provides funds in whole or in part for all of the following purposes:--

- (a) Unemployment relief and other forms of relief to persons."

Up until 1937 in Ontario this classification also included widows' pensions and old age pensions, but these were taken over last year by the provincial government in Ontario- that is, the share which the municipality had formerly been called upon to pay. Then

(b):

- (b) Education including public libraries.
- (c) Hospitals (other than mental) and health services
- (d) Fire and Police Departments and Jails.
- (e) Local improvements such as sewers, sidewalks and pavements and also street widening and traffic control.
- (f) Parks and recreation.
- (g) General municipal maintenance and government.

We think we may interject an axiom which may help us in breaking down this cumulative tax burden and decide what should and what should not be collected from real estate. That axiom is this: "Taxes are collected from real estate, but are largely spent on persons and not on or for the protection of the real estate the people occupy."

"An analysis of the above list discloses the following:--

(a) On the assumption that a personal property tax, with rare exceptions such as the automobile, is impractical and that real estate should be the substitute, we can concede that there should be collected from real estate--taxes to pay for fire and police departments, parks and recreation, collection and disposal of garbage, construction of sewers and sidewalks.

(b) It is open to argument whether schools are a direct benefit to real estate. It is, nevertheless, a fact that education is not only available but compulsory to all without distinction between a real estate owner and one who does not own any.

(c) We believe we have a just cause for complaint against all other items such as relief, hospitals and higher education. We also believe that in addition to being relieved of these burdens there are a few vitally important adjustments to be made to arrive at our goal, namely, an equitable distribution of the tax burden and relief to real estate.

These are:--

(1) to stop the automobile from being a parasite on urban real estate;

(2) to stop a triple income tax on real estate;

(3) to control capital expenditure on the part of municipalities, to limit their borrowing powers and to force more of a "pay as you go policy."

Now I come to the question of Relief. I read from the top of page 8 of the Brief:

RELIEF

"'For the poor always ye have with you' is as true to-day as two thousand years ago.

In recent years relief has been granted to two great classes:--

(1) The unemployable.

(2) The employable who can not get a job.

As business improves a third class is developing.

(3) The employable who do not want a job.

The seven fat and the seven lean years are as true to-day as in the time of Joseph.

The more industrialized a nation becomes the greater the distress in the seven lean years. The more industrialized a city becomes the greater the distress in that city. To illustrate:--

Toronto's unemployment relief tax rate in 1937 was 5.65 mills. Toronto, with nearly six times the population of Hamilton, provided for the collection of \$3,000,000 towards relief for 1937 whereas Hamilton provided for the collection of \$926,000. In rough terms the relief tax per capita in Hamilton was nearly \$2.00 for every one collected in Toronto. When the depression was at its worst in Hamilton 8,600 families out of a total of 35,500 families were on relief. Expressed in population figures the proportion is even more startling because there were at least 45,000 of a total population of 154,000 on relief, with an average cost of \$100.00 per capita."

That is, per capita of the relief recipients.

THE CHAIRMAN: In speaking of the annual charge in Toronto, is that \$3,000,000 interest on the capital amount of relief? I was under the impression that Toronto had capitalized its relief expenditures.

MR. HAMILTON: No, that is the total annual capital expenditures. Part of that has been funded, but now they are beginning to pay back through their funded debt for the money that was spent in previous years. We have tried to get at the annual cost in a typical year.

THE CHAIRMAN: Quite.

MR. HAMILTON: I continue on page 8:

"In addition to this tremendous direct charge on real estate there was the indirect loss to thousands of landlords whose relief rent was fixed at one-third more than the taxes.

It is self-evident that by far the larger percentage of those on relief were employables. Mass production in industry brings about mass hiring but also mass firing. Surely there is only one long term answer to this condition--and that answer, we submit, is--unemployment insurance.

But to charge any part of this relief back on the very homes of the thrifty--well, what can be more discouraging to home ownership?

But what of the won't works and the can't works. We submit that the unemployables are distinctly a responsibility of the State and not of real estate. The won't work or the malingeringer is the problem--he always has been and his class is apt to increase if not

"checked.

May's Constitutional History of England describes the condition of the poor 100 years ago. It so closely parallels conditions to-day as to emphasize that our problem is not a new one; --

Since the reign of Elizabeth, the law had provided for the relief of the destitute poor of England. This wise and simple provision, however, had been so perverted by ignorant administration that in relieving the poor, the industrial population of the whole country was being rapidly reduced to pauperism, while property was threatened with no distant ruin. The system which was working this mischief assumed to be founded upon benevolence: but no evil genius could have designed a scheme of greater malignity for the corruption of the human race. The fund intended for the relief of want and sickness, of age and impotence, was recklessly distributed to all who begged a share. Everyone was taught to look to the parish, and not to his own honest industry, for support.

But worse than this, independent labourers were tempted and seduced into the degraded ranks of pauperism by payments freely made in aid of wages. Cottage rents were paid, and allowances given according to the number of a family. Hence thrift, self-denial and honest independence were discouraged.

Who can wonder that labourers were rapidly sinking into pauperism without pride or self-respect? But the evil did not even rest here.

"Paupers were actually driving other labourers out of employment--that labour being preferred which was partly paid out of rates, to which employers were forced to contribute. As the cost of pauperism, thus encouraged, was increasing, the poorer ratepayers were themselves reduced to poverty. In a period of fifty years the poor rates were quadrupled; and had reached, in 1833, the enormous amount of £8,600,000. In many parishes they were approaching the annual value of the land itself.

Such evils as these demanded a bold and thorough remedy; and the recommendations of a masterly commission of inquiry were accepted by the first reformed Parliament in 1834 as the basis of a new poor law. The principle was that of the Act of Elizabeth--to confine relief to destitution; and its object, to distinguish between want and imposture. This test was to be found in the workhouse. Hitherto pauperism had been generally relieved at home, the parish workhouse being the refuge for the aged, for orphans, and others, whom it suited better than out-door relief. Now out-door relief was to be withdrawn altogether from the able-bodied, whose wants were to be tested by their willingness to enter the workhouse. This experiment had already been successfully tried in a few well-ordered parishes and was now generally adopted. But instead of continuing ill-regulated parish workhouses, several parishes were united, and union workhouses established, common to them all. The local administration of the poor was placed

"under elected boards of guardians; and its general superintendence under a central board of commissioners in London. Within three years the annual expenditure for relief of the poor was reduced to the extent of three millions."

"Granted that unemployment insurance provides for the employables out of work, what is the modern substitute for the workhouse? Surely not a levy on real estate."

THE CHAIRMAN: What do you suggest as a substitute, or perhaps you deal with that later in your Brief?

MR. HAMILTON: We have not presumed to do so, sir.

COMMISSIONER ANGUS: You are not basing an argument, are you, upon a comparison between conditions 100 years ago and the present without determining whether the present unemployment situation is a temporary or a chronic one?

MR. HAMILTON: It shows there are the two classes. There will always be the chronic unemployables, and then there is the other class of those who temporarily cannot get work.

COMMISSIONER ANGUS: The quotation speaks of payments freely made in aid of wages. Is there anything in Ontario analogous to that situation of supplementary relief being granted to bring the wage up to a living wage?

MR. HAMILTON: In certain sections that element has crept in, I think, with a certain type of employer, but I do not think it is a big element in the present situation. A man on partial relief will sneak in a few days work, not enough to take him off the relief lists.

Now I come to page 10, dealing with the Income Tax:

INCOME TAX

What commodity other than real estate pays taxes to all three taxing bodies, namely, the municipality, the province and the Dominion? What other commodity pays to the municipality an average of 4 per cent capital tax yearly and then has its net revenue taxable as income by both the province and the Dominion?"

THE CHAIRMAN: When you refer to a 4 per cent capital tax, you are referring to the normal municipal assessment tax rate?

MR. HAMILTON: Yes, sir. The average tax rate throughout Ontario is approximately 4 per cent. The Canada Year Book gives the total assessment in Ontario as \$2,700,000,000, and the taxes collected \$118,000,000 in round figures, which is a little over 4 per cent.

COMMISSIONER ANGUS: Any recent purchaser of real estate would have purchased it knowing of the taxation against it, and I suppose the price he paid has been really for the real estate as now taxed. It is sometimes put this way, that the taxes are capitalized against the value of the real estate, and a deduction is made from the selling price accordingly.

MR. HAMILTON: Most of the real estate sales in the past few years have been distress sales, at prices that have discounted the taxes against the real estate, which buyers have picked up at what they considered a very great bargain compared with prices a few years ago.

COMMISSIONER ANGUS: And if these real estate taxes were suddenly reduced, that would amount to a present to the recent purchaser of real estate?

MR. HAMILTON: Not a present, It would simply mean that he would be getting a return, whereas he is

not in that position now. Continuing at page 10 of the Brief:

"In Canada we have side by side two systems of direct taxation:--

- (1) A tax on value commonly called capital levy.
- (2) A tax on earnings more commonly called income tax.

Real estate is the only property that is called upon to pay a capital levy more than once. It must pay this levy yearly and in perpetuity to the municipality. We are informed that Canada and the United States are the only two countries in the world where this annual capital levy is still collected. This levy must be paid regardless of whether real estate shows a dollar of earnings, whether in or out of use and whether vacant or improved.

Income tax was not collected in Canada until the war. It is now a very large source of revenue.

But to arrive at a comparison of taxes on real estate and taxes on other forms of property we must arrive at a common denominator. The simplest way to do this, we feel, is to express the capital tax in the form of an income tax.

The law in Ontario calls for land (including any building thereon) to be assessed at its actual value. The total rateable property in a municipality is then charged with a rate of so many mills on the dollar. In 1936, according to The Canada Year Book, the average

"tax rate in Ontario was about 40 mills or 4 per cent of the value--not on its earnings, but on its capital value.

What does this 4 per cent capital levy amount to when expressed in the form of income tax? Its inconsistencies are startling. Examples could be taken in every city and the examples following taken from actual operations of different types of buildings in the City of Hamilton are applicable to any urban centre in Ontario."

Then on the top of page 11, Example (1) is given:

"271 London Street South--a 6-room, rug brick home, built in 1929.

Gross rent		\$360.00
Expenses:		
Landlord pays water		
rates	\$10.95	
Insurance	6.50	
Repairs of 5% of		
gross revenue	18.00	
Depreciation 2% on		
replacement cost of		
\$3,000.00	60.00	
Allowance of 5% of		
gross rentals for		
vacancies	18.00	<u>113.45</u>
Net Revenue before payment of		
taxes		\$246.55
Taxes		106.78

This equals an income tax of 43%."

It will be seen from that table that the taxes, in relation to the net revenue before payment of taxes, are equivalent to an income tax of 43%.

COMMISSIONER ANGUS: What would be the assessment on that property?

MR. HAMILTON: \$2,810.00.

COMMISSIONER ANGUS: And would that represent capitalization of the \$246.00, or of the amount of revenue after taxes had been paid, \$140.00?

MR. HAMILTON: The net revenue after paying taxes would be about \$140.00.

COMMISSIONER ANGUS: And the \$2,810 would be the \$140.00 capitalized?

MR. HAMILTON: There is no such system here at all.

COMMISSIONER ANGUS: That is what you would think of as the capital value, would you not?

MR. HAMILTON: Looking at it from its value, and taking into consideration its earning power, yes. Then the rate of interest, whether it was five or six or seven per cent, would make a difference in the capital value.

COMMISSIONER ANGUS: The assessment capitalizes it on a 5 per cent basis, the net revenue after payment of taxes being \$140.00.

MR. HAMILTON: I can say from practical experience that that is merely a coincidence in this particular case. It is not the method adopted in arriving at the value.

COMMISSIONER ANGUS: I would put it differently. If somebody bought the property at the assessment price, he would be making about 5 per cent on his investment on this showing.

MR. HAMILTON: Yes. That, of course, is a building put up within the last seven or eight years. Example (2) deals with an older type of building, built about 1910, and there we find that we have the equivalent of an

income tax of 73 per cent:

"Example (2)

17 Erie Avenue--a 7-room, stock brick house built about 1910.

Gross rent		\$300.00
<u>Expenses:</u>		
Water rates	\$12.00	
Insurance	6.50	
Repairs 10% of gross rental	30.00	
Depreciation 2% of replacement value of \$3,500.00	70.00	
Allowance for vacancies 5% of gross annual rental	15.00	
		<u>133.50</u>
Net revenue		\$166.50
Taxes		121.60

This equals an income tax of 73%."

COMMISSIONER AFGUS: Have you the assessment for that building?

MR. HAMILTON: It is \$3,200. Then example (3):

"Example (3)

80, 82 and 82½ King Street West and 19 and 19½ Market Street. This is a combined retail store and warehousing property located in secondary business area of Hamilton.

Gross revenue for 1936		\$5,660.00
<u>Expenses:</u>		
Water Rates	\$115.00	
Insurance	606.00	
Management	283.00	
Repairs, etc., 5% of gross rental	283.00	
Depreciation 2% on replacement value	<u>800.00</u>	<u>2,087.00</u>
Net revenue		\$3,573.00
Taxes		2,880.00"

The tax in this case equalled an income tax of 80 per cent.

COMMISSIONER ANGUS: And the assessment there was what?

MR. HAMILTON: The assessment on that property was \$76,000.00. That assessment was appealed to the county judge and was partially reduced. I think the reduction amounted to about \$13,000.00. In other words, the assessment was reduced from \$76,000 to about \$63,000.

COMMISSIONER ANGUS: Would the 1936 rentals be normal rentals. Would you look on that as a bad year or a good year?

MR. HAMILTON: 1936?

COMMISSIONER ANGUS: Yes.

MR. HAMILTON: What is normal and what is abnormal is a question that is almost incapable of answer.

COMMISSIONER ANGUS: Were rents steady at that time, or were they varying from year to year?

MR. HAMILTON: Most rents vary from year to year. They are somewhat better now than they were. When we took over that particular property for management about 1931, the gross revenue from it was \$16,000. Most of the property was vacant and in very bad shape, and it was a matter of building it up. These rentals represent its highest and best year under present conditions.

THE CHAIRMAN: Have you any figures that strike a general average? Of course, it is easy to pick out properties which would lead to certain results, although I am not for a moment suggesting that these have been picked out, but I think it would be more valuable if you could give us a general average.

MR. HAMILTON: Showing the relationship from the angle of the income tax?

THE CHAIRMAN: Showing the return on the investment, from the angle from which you are looking at these particular properties. You have no general average figures?

MR. HAMILTON: You cannot get them, because each piece of property varies, even in one block. It jumps around and there is no consistency to it when you attempt to express the net revenue in the form of income.

THE CHAIRMAN: I know some properties of which I have knowledge in Toronto, where the results are not very different from these; but whether other people are equally unfortunate in their real estate, I do not know.

MR. HAMILTON: We can give you dozens of examples, from Toronto, Hamilton, and other places. There is the odd property that is still giving a fair net revenue. We are using these examples to illustrate that there is no equitable distribution in the present system of taxation, when you ignore rentals as a factor in the value.

THE CHAIRMAN: Of course, that goes to the whole principle of municipal taxation pretty well. Our system at the present time is on the basis of value, and of course rental is only one element in determining the value. At least, the Court of Revision, the Ontario Railway and Municipal Board, has so held, and therefore properties are held at a much higher assessment than the rental would justify.

MR. HAMILTON: That is our point.

THE CHAIRMAN: You suggest that our whole system of municipal assessment should be changed and put on a rental value basis?

MR. HAMILTON: I have to admit, Mr. Chairman, that I do not suggest such a thing. I was of that school for some time until I began to study the English system. I believe, after all, the whole crux of the problem is this: If we were permitted, or if the evaluators were compelled to consider the rental value as a factor and an important factor in arriving at certain types of investment property, and if it was open to us to go to the courts to get some of these basic principles established in assessment appeals it would go a considerable way to curing some of the inequities that appear in this type of reciprocity. So far as the ordinary home is concerned I think it makes very little difference whether it is on rental value or capital value. The prime thing is, if the average of taxes is so excessive as to make the home an unattractive buy -- which we submit is the present condition of affairs. --- the solution is to bring the home down to a basis where it is an attractive buy for the home owner.

THE CHAIRMAN: That is one of the real practical difficulties at the present time. The assessments were fixed before the depression, based on values. There have been a very few pieces of real estate transferred in important sections of the cities since the depression; consequently the assessors and the judges on appeal have refused to reduce assessments to the extent to which they would be compelled to reduce them if they took into account income only. They have sought to maintain the values previously set on the basis, if they once depart

from them they will upset the whole scheme of assessment.

MR. HAMILTON: The whole scheme of municipal assessment would fall down like a house of cards if the actual assessment from year to year in a depression was taken as the value for that year and assessed accordingly.

THE CHAIRMAN: That is the difficulty, and we are dealing with assessments under exceptional conditions, growing out of the fact that assessments are higher than properties could be sold for at the present time. The assessors

have said, having regard to the whole assessment, we will have to maintain the assessment on some such basis as this. While you may say your particular piece of property has depreciated to such an extent that you could not realize that for it, yet having regard to the neighbouring properties and the amount with which they are assessed, it is not equitable to reduce yours below a certain figure. That is what you are met with on appeal.

MR. HAMILTON: Yes. It depends upon the manner of presentation. That is one answer and there are other answers given for not reducing it.

THE CHAIRMAN: The net result is you do not get the reduction?

MR. HAMILTON: Yes. I confess the judges have their difficulties. Take 83 King St. West, Hamilton. I had an appeal before His Honour Judge Thompson, and His Honour said: "Well, Mr. Hamilton, what is a poor judge to do?" He had in mind a case where the whole basis of the tax rate was fixed on the rateable value of a property in Hamilton. As an example of what may happen perhaps I should say this. I do not know whether this is known or not, but we had a case in Edmonton. I understand that

in 1913 Edmonton had an assessment of about \$114 millions with a tax rate of 16 mills. In 1933 they had an assessment of \$54 millions with a tax rate of 64 mills. So that as the assessment comes down the rate goes up, if the services now charged on real estate are to be continued on it. The vital principle, we submit, is that the total of services charged on real estate put it altogether out of line with other forms or types of wealth.

If you will pardon me I think I may as well deal with that point now. I was able to run across a description of the English system for the taxation of real property on an income basis. I do not want to go into that phase of it so much as to illustrate certain figures that are given there showing the relationship in the old country of the total tax collected from real estate to the total revenue collected in England from all sources.

THE CHAIRMAN: I am afraid that would not help us much, because there is such a tremendous concentration of wealth in England. A general comparison would not aid one.

MR. HAMILTON: If I could give you the figures I think they would be worthy of consideration. The United Kingdom shows a charge of 18.7 per cent on real estate out of the total taxes. According to the American figures the United States showed 61.2 per cent charged to real estate, and as near as we can ascertain in Canada the municipalities collected directly from real estate in 1935 approximately 274 million dollars, out of a total revenue collected from all sources of 711 million dollars. That in itself equals 40 per cent collected from real estate directly through the municipalities.

We are unable to find out how much additional tax was borne by the earnings of real estate, and paid as federal and provincial income tax.

THE CHAIRMAN: When you speak of \$700 odd millions as being the total taxes you mean the total of federal, provincial and municipal taxes?

MR. HAMILTON: As near as we can give it. It is taken from the Canada Year Book, Mr. Laidlaw tells me. Apparently there were \$274 millions from municipalities, \$126 millions from provinces, and \$317 millions federal.

Example 5 on page 13 is simply an illustration. It is given to show in a picturesque way the difference between the tax on other forms of investment as compared with real estate. Let us compare the tax of \$100,000 on real estate and \$100,000 of 4 per cent bonds. The tax on real estate averages 40 mills, which would be \$4,000 a year. The bonds, being on an income base would give a total income of \$4,000. The minimum exemption would be \$2,000, the net taxable income would be \$2,000, and both the dominion and the province of Ontario would collect income tax on that amount. The dominion government would collect \$70 and the province of Ontario \$35, so a total of \$105 would be collected from \$100,000 worth of bonds, as against \$4,000 collected from real estate.

THE CHAIRMAN: In one illustration you are assuming the man has \$100,000 in bonds. If he had \$200,000 in bonds he would not get the second \$2,000 exemption. You take the whole exemption off the first lot.

MR. HAMILTON: No. The principle seems to me to be if he gets up into that bracket there is not much sympathy shown for him from any source. It is not suggested for one moment that any such tax should be made on bonds; but it rather illustrates the outstanding difference between

the man holding real estate as an investment and the man holding bonds, which are very often the first charge on the real estate through municipal issues/ I say there are treated differently. I say there is disequitable distribution. Can anything more clearly demonstrate the handicap under which real estate suffers in the competitive field of investment? Can anything be more reasonable than to ask that in any co-ordinated and reasonable distribution of the tax burden real estate owners of all classes be allowed a full set off against income tax of the amount paid to the municipality? If the owner of a home assessed at \$2,000.00 pays annually \$80.00 a year, is there any reason why a salary earner of \$2,000.00 should pay no income tax? If a home owner pays the 4 per cent capital tax yearly, is not the burden of proof on the income earner to show why he should be so exempted? If real estate is to be the principal source of revenue for the municipalities, should not that fact be taken into consideration in the distribution of the tax burden? Today the Income Tax Acts make no allowance whatever for the taxes a man pays on his home.

THE CHAIRMAN: They are not taxed on rent for income tax, are they? Where a man owns property and is paying income tax, does he pay tax on the rent also?

MR. HAMILTON: If he receives revenues which make him taxable even if the source of the revenue is real estate, he must pay income tax both to the dominion and the province.

COMMISSIONER ANGUS: In that case he can set off municipal tax, if he is deriving revenue from property.

MR. HAMILTON: No, there is no set off at all, not even in arriving at his income. If it is of a revenue type of property he can set the municipal tax as part of

his operating charge.

THE CHAIRMAN: It would come off in that way.

MR. HAMILTON: But the man's home ---

COMMISSIONER ANGUS: He is not charged on the rent of his home. He does not have to show in his income return, "I live in a home rent free, and therefore I have income equal to the income from the home."

MR. HAMILTON: No, but he is not allowed to take from any income he may earn the tax which he pays to a very important tax collecting body, namely the municipality.

COMMISSIONER ANGUS: Is not that the point? Does the tax come off the rent that the home would earn if he were not living in it?

MR. HAMILTON: I have a different conception from you. I may be wrong. My conception of it is this: Here are three great tax collecting bodies, and each one of them makes its main source of revenue real estate. If the home owner has paid a substantial tax on his home, and then has a net taxable income from his earnings, should it be ignored? He cannot take a set-off from the tax paid the municipalities as against the tax which may be accumulating and payable to the dominion and the province where both collect income tax. That is the thought I have in mind.

COMMISSIONER ANGUS: And the answer is if he took that set-off and asked for that set-off would he not have to show as part of his income the rent he pays himself for his home?

MR. HAMILTON: I think he would gladly do that. Here is the point I am getting at. If the rental value of the house, we will say, is \$600 a year and it has to be calculated as part of his income, having found that and ascertained his income he could then take \$175 of

taxes off the taxable income ascertained.

THE CHAIRMAN: He would be in pocket.

MR. HAMILTON: He would be very substantially in pocket.

COMMISSIONER ANGUS: I agree he would be in pocket, but I was wondering if he should not charge himself up with the rent he pays himself.

MR. HAMILTON: He would gladly do that if he got the set-off.

THE CHAIRMAN: I think we have the point quite clearly now, Mr. Hamilton.

MR. HAMILTON: We go on and state in the brief:

"His capital tax may amount to 40 per cent of his home's earning value but he has not set-off.

We express admiration for the sporting blood of the Britisher who pays an income tax of 4s. 6d. on a £100 or about 22% income tax, but we are just beginning to appreciate that the owner of urban real estate in Canada is paying at least twice as much as the sporting Britisher."

The Canadian home owner has to pay this tax whether he likes it or not.

THE CHAIRMAN: You do not want us to stop to pay tribute to the sporting instincts either of the Britishers or of the Canadians.

MR. HAMILTON: The alternative to that, sir, is this: If in the course of adjusting tax burden it was found advisable to remove some of these charges, which we take up here, it should be done. We do admit that they are taxes of a type which are directly serviceable to real estate; and if the direct tax on real estate were limited to that then there would be only one answer. Any income received from that property should

go into the general field of taxable income.

With regard to housing, we have not gone into that in an extensive manner. We simply state:

"There was never any housing shortage when the tax rate was 15 mills. There will not be any housing shortage when by the removal of excess taxes a man has to pay for his home only once instead of twice as he must now."

THE CHAIRMAN: Without giving it special study I should say that is true, Mr. Hamilton; but where do you see any chance of property tax being reduced to 15 mills or anywhere near it in the near future, having regard to the burdens of debt and services which all governments are carrying today? I am dealing with it only from the standpoint of housing. You say there will be no housing charge if you reduce the tax rate. Is there any possibility of the tax rate being so reduced, having regard to the burdens of all governmental bodies, dominion, provincial and municipal?

MR. HAMILTON: I can speak perhaps more of the Hamilton situation than I can of some of the others. The city of Hamilton tax rate divides itself roughly into three big items, general services, education and the debt. So far as Hamilton is concerned they see no direct reduction from the payment of debt charges until about 1940. By 1945 with careful guarding against further capital expenditures they will cut their debt in half or more, with the result that they will save almost \$10 millions on the tax rate out of that debt alone. An analysis of the different matters that are taken up here would result in the tax rate being brought down very substantially. If on the other hand the demands for revenues, both by the province and the dominion, are such that only partial

relief can be granted, then to what extent housing aid should be given is a matter which only the future can tell.

THE CHAIRMAN: I think that is a fair statement.

MR. HAMILTON: In dealing with housing I said that a man pays twice for his home. In that respect you will note that he has to pay an annual rate of four per cent on the house that he may buy, in the form of taxes, in a sixteen to twenty year period he has bought it over again from the municipality.

THE CHAIRMAN: In the meantime he has received services that are of very great value to him.

MR. HAMILTON: Well, in part.

THE CHAIRMAN: You cannot put the whole tax as a second payment for his property.

MR. HAMILTON: Quite right. I agree with you, sir. But we do submit a great many of the charges are not services which are directly beneficial to real estate. We say:

"Private capital has built about 90 per cent of the new houses in England but neither the builder nor the buyer are faced with a 4 per cent annual capital tax. There the tax is based on the annual earning value of the property. Under present conditions, the buyer has to buy his home twice -- once from the builder and once every twenty years or so from the municipality."

THE CHAIRMAN: Have you any estimate of what the tax would be in England on a property of the same value as those you have given us, computed on the different basis?

MR. HAMILTON: As near as we can figure it out, I think the average would be about 30 to 35 per cent of what the taxes are here.

THE CHAIRMAN: You think our real estate taxes are about three times as high as the real estate taxes in

Great Britain?

MR. HAMILTON: Yes, sir.

THE CHAIRMAN: How do they compare with the United States?

MR. HAMILTON: Well, the United States system is practically the same as the Canadian system.

THE CHAIRMAN: There would not be a very great deal of difference between the burden of taxation in the two countries?

MR. HAMILTON: Between the United States and Canada?

THE CHAIRMAN: Yes.

MR. HAMILTON: No, sir. The agitations and complaints against high taxation of real estate have been even stronger there than here; and I think in about 7 or 8 states they have been successful in having what is known as "an Over-all Tax Limitation Act" passed, whereby the utmost that can be collected from real estate is 15 mills on its actual value. When they have collected that 15 mills they must look to other sources for their revenue.

THE CHAIRMAN: The people who own property in Ontario would give a sigh of relief if there was such legislation here.

MR. HAMILTON: We want to give you the whole picture, and we appreciate the difficulties you gentlemen are going to have in coordinating the picture. This is our story and we like to tell it.

THE CHAIRMAN: What about assessment for taxation?

MR. HAMILTON: We have discussed a method of assessment. Possibly paragraph 2 is worthy of special mention. It reads as follows:

"Under this system vacant land suffers most

heavily, and many property owners in all municipalities have abandoned their vacant land, which under tax sales, have passed to the municipality, but the municipality derives no revenue from it now as formerly from the taxes then paid."

Possibly a practical illustration of the fictitious value of these vacant lands would be of interest. As you know, three years of arrears of taxes justify the municipality in placing land up for sale for taxes. Now, three years arrears at 4 per cent yearly amounts to 12 per cent of arrears of its so-called assessed value. It possibly takes another year before it can be brought actually for sale under the hammer of the auctioneer with the result that there is 16 to 20 per cent of its so-called value in arrears against the property, and it is offered for sale at that price, with no takers.

THE CHAIRMAN: I do not think you need demonstrate to us that at the present time in portions of Canada which we have visited arrears of taxes on real estate are such that substantial areas are passing into the control of municipalities. We had one municipality adjacent to Winnipeg where considerably more than 50 per cent of the entire area had passed into the control of the municipality through tax sales.

MR. HAMILTON: Well I think that answers the principle involved here, sir. There is one point of interest to which I believe I can draw attention, and that is this:

"As regards improved property, the price which can be obtained for it is largely determined by its present net revenue, and increased taxes or those caused by an increased assessment or an increased tax rate, or both, must reduce the net revenue and value. For

example, if property be valued on the basis of a net revenue of 5% on the value, then every increase in taxes reduces the value by twenty times such increase. An increase of \$50 in taxes will reduce value by \$1,000.

Many thousands of owners of small homes now find it impossible to obtain what they paid for their homes a few years ago when taxes were much lower."

THE CHAIRMAN: There is no doubt of the truth of that.

MR. HAMILTON: It is interesting to note these figures at this stage, sir. I believe we all agree that home ownership and its encouragement is possibly one of the most vital stabilization factors in any nation, and to the extent that it is discouraged there is danger of dissatisfaction and of discontent.

You will note the tendency in Toronto between 1926 and 1936. In 1926 the Owner Occupied Homes were practically 65,000, and the Tenant Occupied Homes 36,269. In 1936 the owner occupied homes had been reduced by nearly 6,000, to be exact, 5,891, and the tenant occupied homes had increased by 12,703. It is difficult to say how much more the reduction would have amounted to had it not been for the moratorium, which was, at least, an encouragement to the home owner to hang on and pay interest and taxes in the hope that changes in conditions would give him some return on his equity. There is a very short paragraph at the bottom of page 13 that I should read, and it reads as follows:

" Publicly owned commercial enterprises now exempt should, we think, be taxed, just as were the services when privately owned."

THE CHAIRMAN: It had that very strongly presented to us by the Real Estate Home Owners Association in the west and also by the municipalities.

MR. HAMILTON: Then that statement alone will be sufficient for your purposes here.

THE CHAIRMAN: Yes. The whole problem has been developed and elaborated in discussions on these briefs.

MR. HAMILTON: I shall now deal with education.

We say:

EDUCATION

" How much of education is a municipal matter and how much provincial or dominion?

How far is free education a responsibility of the state?

Beyond the Three R's, what is the test -- brains or age?

These and a hundred other academic questions might be asked and as many different answers given.

We deal only with its cost as one of the cumulative factors in high taxation. The mill rate in Toronto in 1937 for education is 11.45 -- in Hamilton 13.56. These two municipalities classify their tax rates under two headings -- one for public schools and the other for secondary schools. Public schools in Toronto cost 7.60 mills -- in Hamilton 8.27 mills. Secondary schools in Toronto 3.85 mills -- secondary schools in Hamilton 5.29 mills.

We submit that as an initial step the whole cost of secondary schools should be assumed by the province and that no part of their cost should be charged to real estate.

Arguments in support of this submission are:-

Firstly, Provincial maintenance of secondary education is consistent with the fact that the Province makes the regulations. "

THE CHAIRMAN: But they also make regulations for primary education, Mr. Hamilton.

MR. HAMILTON: We appreciate that. If there was a division we hoped at least partial relief would be given.

THE CHAIRMAN: I quite understand your point, but I am only suggesting that the portion of the argument you make in support of it is open to that comment. The same applies to elementary education.

MR. HAMILTON: That is quite true. I continue;

"Secondly: It would insure uniformity.

Thirdly: It would stop the constant disputes now going on throughout the province in fixing the cost per non-resident pupil wishing to attend the secondary schools in the urban centres.

Fourthly; It would relieve the urban ratepayer from paying over half the cost of the non-resident Pupil which is the practical result of concessions made to the surrounding townships by local boards of education."

There is an illustration of that here. I have the case of the charge fixed in the city of Hamilton for outside pupils. It is about \$125 per year. We are informed that the cost per pupil in the vocational schools of Hamilton amounts to about \$277 per year. There is a slack there of \$152 which is absorbed in the general tax rate of Hamilton.

THE CHAIRMAN: Is not the real situation this? You say the burdens on real estate at the present time are excessive, and are so heavy that they are affecting

public welfare.

MR. HAMILTON: Yes.

THE CHAIRMAN: And one method of reducing them would be for the provincial government to take over the whole responsibility for secondary education. I think your real argument is the burden on real estate rather than the particular arguments you are suggesting here.

MR. HAMILTON: What we are trying to do is to suggest constructively that here is an accumulation of different rates which makes a burden ---

THE CHAIRMAN: I am thinking only of the reasons you give why the province should take over secondary education. I do not think these reasons are very weighty. If there is any real reason it is that the burden is too great and you want some of it lifted.

MR. HAMILTON: I think that is quite true, sir, and it is one of the factors of the cumulative burden. On page 17 appears the tax rate for education.

THE CHAIRMAN: You need not read that. We have it before us.

MR. HAMILTON: You have already had submitted to you by the Teachers' Federation the proportion of the cost of education borne by the central states, and I think it can be emphasized again that while Ontario pays 11 per cent, the provinces of Nova Scotia, New Brunswick, Saskatchewan and Alberta pay from 15 per cent to 20 per cent, British Columbia nearly 30 per cent, and Prince Edward Island over 50 per cent. They also reported that the government contribution in Great Britain is over 50 per cent. In the states of Australia and the Commonwealth of New Zealand the central governments carry the whole cost of education.

THE CHAIRMAN: There is one point at least in which your brief agrees with that of the Teachers'

Federation of Canada.

MR. HAMILTON: I shall skip the question of hospitals and health, social services and relief because Mr. Laidlaw will deal with them. I shall now turn to page 20 and deal with license fees and gasoline taxes. Perhaps I should again emphasize that we realize that this is not a matter with which the dominion as such is interested, but it is a very important item in the expenses involved in municipal administration. We say:

LICENSE FEES AND GASOLINE TAXES
FROM AUTOMOBILES

"We submit that as a matter of right and justice the urban municipalities are entitled to a share of the revenue collected by the province through the medium of license fees and gasoline tax."

THE CHAIRMAN: That proposition was presented to us very strongly by the municipalities in the west. They said they did not think it was fair for them to have to pay the whole cost of the upkeep of the roads, which upkeep was made much more expensive by reason of the motor traffic and the province to receive the whole benefit from the license fees and the gasoline tax. That is your whole problem?

MR. HAMILTON: That is the whole thing in a nut shell.

THE CHAIRMAN: Then, we have that clearly before us in the other briefs.

MR. HAMILTON: I do not think I need mention anything in regard to page 22. It is there as a suggestion.

THE CHAIRMAN: All right, Mr. Laidlaw.

MR. J.B. LAIDLAW: I shall deal with the matters that appear on pages 18 and 19.

HOSPITALS AND HEALTH

Hospitals have never been restricted in their services to the boundaries of the municipality in which they are located. They serve the whole surrounding area. The annual deficits in hospital administration are tremendous. These deficits are met out of the current tax rate. The per diem allowance granted by the Province is not anything like sufficient to take up this deficit. Free hospitalization is closely allied to relief."

I may interject here that the accounts which we have seen of the municipalities show a very much increased amount coincident with relief trouble. In the city of Toronto in 1936 the amount paid for hospitalization -- that is, those who paid it to the hospital and those unable to pay themselves -- was \$1,316,718. The brief continues:

"This service is granted regardless of real estate ownership. Mental hospitals are now maintained at the expense of the State. But the outstanding argument is, that hospital services are not limited to the boundaries of a municipality and no government could be accused of favouring the urban centres if they saw fit to greatly increase the grants to hospitals because the care of the sick is essentially a provincial matter rather than a municipal one.

COST OF SOCIAL SERVICES INCLUDING UNEMPLOYMENT RELIEF

The figures already quoted of the tax rates for

cost of unemployment relief for Toronto and Hamilton in 1937 are as printed in the tax bills of the respective cities, and include the debt payments on relief borrowings in previous years.

It is well known that both cities have borrowed the whole or a large part of the cost of relief for several years past, and will again in 1937.

There are, however, several other social services, including Hospitalization, Child Welfare, Old Age Pensions and Mothers' Allowances, the two last of which are now assumed by the Province.

The cost of all social services in 1936, not including libraries nor the local public health administration (both of which now cost very substantial sums) is shown below for several Ontario cities, expressed in a tax rate calculated upon their assessment."

May I interject here the remark that many include libraries in social services and public health administration. There are some public men who claim that included in social services should be those of libraries and public local health and also parks and gardens, and amusement provided in parks, such as band concerts and so on.

We have not included those. We show only in this table below what everyone who has considered the matter agrees to be a social service rather than a direct municipal service

"There is also shown the amount borrowed for relief payments in 1936 expressed as a rate upon their assessment.

In some cities the current year's debt payment on previous relief borrowings is nearly as large as the current year's actual relief payments. For some years to come the payments on the debt incurred for relief will require a substantial tax rate to be levied even if the current payments for relief are greatly reduced."

It may be interesting to note that in the city of Toronto, from 1933 to 1936, four years, the amount of ~~borrowings~~ for relief works was \$3,140,343 and for direct relief \$10,622,242, and that in 1937 there was borrowed \$1,792,500, making a total aggregate in the five years of ~~borrowings for relief works and direct relief~~ in the city of Toronto of \$15,565,085.

That indicates the tremendous ~~strain that has been~~ put upon municipalities and ~~real-estate~~; and now that these relief debentures are coming due the burden for the future indicates that Toronto will have to charge a higher tax rate of at least one mill for relief in 1938 than was charged last year, notwithstanding the decrease in actual relief being granted.

THE CHAIRMAN: That is by reason of interest paid on moneys borrowed?

MR. LAIDLAW: And repayment of money borrowed in previous years.

" There was considerable variation shown, caused in most cases by conditions not controlled by the municipality, which supports our contention that such expenditures should be assumed province-wide or dominion-wide in place

" of locally as at present."

You will see that for the year 1936 I have given a list of cities with the figures opposite them. The first column shows the tax rate for social services including debt charges on previous borrowings for relief payments. In Toronto the rate is 6.60. The additional tax rate if the amount borrowed in 1936 had been paid out of current revenue is shown in the next column and for Toronto the figure is 2.50. The total expenditure in 1936 for social services and relief is shown in the third column and for Toronto it is 9.10.

You will see that the total amount varies from as low as 5.50 in the cities of Peterborough and Sarnia and 13.30 in Owen Sound to as high as 20.90 in one city.

I do not know whether you would be interested to find out how the figures for Toronto have been made up, but I have taken them off very carefully from the official returns. It has not been an easy matter to take these figures from the official returns, because the returns from all the cities do not collate the figures under one head. The reference in this memorandum shows that the figures quoted are obtained from these different statements in order to bring them into one, and that is true of all the statements I have prepared. I have taken them from the original statements of the municipalities and checked them with the uniform statements filed with the Ontario government, but I do not guarantee their correctness to a cent. I believe however that they are substantially correct in accordance with the figures brought out to an even figure of five mills rather than to the exact decimal point.

If it is desired to ask any questions in regard to any of these figures we shall be glad to give any

further information we can.

THE CHAIRMAN: Mr. Laidlaw, have you a list of social services that are included in these figures for which you have given the tax rate?

MR. LAIDLAW: I might read the statement in regard to Toronto, which is a case in point:

"	TORONTO	
	1936	(Reference to page number of Finance Commissioner's Report for 1936, in brackets, (26))
<u>ASSESSMENT</u>	(8)	
For Schools.....	\$979,597,948	
For General Purposes.....	908,437,728	
<u>GENERAL TAX RATE</u>	(26)	24.35
Public Schools Rate		10.50
Separate " "		15.05
<u>SOCIAL SERVICES</u>	(25)	
Maintenance	(25)	3,895,797
Debt charges on Relief Loans	(25)	1,544,566
		<hr/> 5,440,363
Debt Charges on Unemployment Relief Works and Services(18)	539,000	<u>Tax Rate</u>
Total	5,979,363	6.60
<u>BORROWED</u>		
For Direct Relief (14)	2,183,552	2.50
For Relief Works (36)	71,347	
Total paid and borrowed for Direct Relief and Relief Works for 1936	<hr/> 8,234,262	<hr/> 9.10

PRINCIPAL SOCIAL SERVICES

(30)

Old Age pensions	225,359	
Mothers' Allowances	489,159	
Children's Aid Societies	307,830	
Hospital Relief	1,316,718	

WELFARE DEPARTMENT

General Administration	148,698
Relief Administration	370,401

Part of Direct Relief

paid by City out of Taxes 585,340"

We havenot included the local health administration in Toronto which costs \$1,000,000 nor the library, which costs \$500,000, nor the parks, costing \$1,000,000.

THE CHAIRMAN: We are very much obliged to you, Me. Hamilton, for the brief you have presented. It brings to our attention an important matter relating to charges upon real estate and it will receive most careful consideration in connection with other briefs dealing with the matter.

MR. HAMILTON: And may I express, sir, our appreciation of the courteous hearing you have given us.

EXHIBIT No. 98: Brief submitted by Ontario Association of Real Estate Boards.

THE CHAIRMAN: The next brief to be submitted is that of the League for Social Reconstruction. I understand that it will be presented by Professor Scott and Professor Marsh.

BRIEF SUBMITTED BY THE
LEAGUE FOR SOCIAL RECONSTRUCTION.

MR. LEONARD C. MARSH (President of the League for Social Reconstruction): Mr. Chairman, I am the

present President of the League for Social Reconstruction and Professor Scott is past President and a member of the National Executive. I am by profession an economist while by profession Mr. Scott is a lawyer, and we propose, with your permission, to divide the brief. A part of its subject matter is primarily legal or constitutional and Professor Scott will speak to the brief in so far as such questions are concerned. I shall deal with the matters that are more economic in character. With your approval also we will speak to the brief rather than bother you with reading every word of it.

THE CHAIRMAN: We are pleased to hear that.

MR. MARSH: We will begin with the first part of the brief which Professor Scott will discuss.

MR. F.R.SCOTT: The problems which are before you to-day, Mr. Chairman, we have tried to approach from a point of view rather different from that adopted by any other organizations. We have no desire to go over a great mass of statistical material. We have seen a number of the briefs already presented and they seem to cover adequately that part of your problem.

We have tried in our brief to discuss certain very fundamental questions, namely: What sort of country are we seeking to develop in Canada? What are the national purposes which we are attempting to fulfil through our governmental organizations? We have asked these questions and discussed them in order to have a criterion from which to select, from among all the suggestions that are put forward to-day, those which will best achieve what we conceive to be our national purposes.

As we have said on the first page of our brief, there is, to use a current term, an ideological problem facing this Commission and the people of Canada to-day.

We have started with the historical approach. We have gone back to the time of Confederation and have asked the question: What were the national purposes discussed by the Fathers of Confederation, which they hoped would be achieved through the British North America Act? We have stated that a reading of the Quebec Resolutions and the debates on Confederation, and a reading of the British North America Act in the light of those discussions, reveals clearly five predominant purposes which the Fathers of Confederation were attempting to accomplish at that time.

On some of these I need not spend much time. The first was the Union of the British North American Colonies in a single federal state under the crown of Great Britain. It is worth while stressing the idea of union. Previously, there had been in Canada independent provincial governments -- independent, that is of one another, though they were all under the British crown. We submit that at Confederation it was intended to get rid of provincial sovereignties in relation to matters essentially national and to create a single government.

Secondly, it was decided that that government should be erected on the model of British parliamentary institutions. In other words, acceptance of the principle of responsible government and of democratic institutions was fundamental in the whole Confederation agreement.

Thirdly, there was the idea of the protection of minority rights. That also was part of the agreement stressed by the Fathers of Confederation.

I come now to the fourth of the purposes set forth by the Fathers of Confederation in 1867, which you will find dealt with on page 4 of the brief. This is of much

greater moment at the present time. It was decided, we submit, to create a national government fully empowered to deal with essentially national problems and possessing a residue of power over matters of common concern to all the provinces.

We have taken the trouble to quote extracts from a number of speeches delivered by the most responsible and important persons -- the Fathers of Confederation and others -- at that time bearing upon this question. We have quoted two extracts from Sir John A. Macdonald's speech in which he emphasizes most strongly the fact that the Canadian constitution is an improvement upon the constitution of the United States precisely because it does create a strong national parliament and thus avoids the States Rights Doctrine which, in his opinion, was a principal cause of the American Civil war.

The second extract from Sir John A. Macdonald's speech indicates that a particular feature of the Canadian constitution is that the Dominion Parliament has an effective residue of power, which he says is a wise and necessary provision and one absent in the United States. He makes the significant remark that we have thereby strengthened the central parliament and made Confederation one people and one government instead of five peoples and five governments with merely a point of authority connecting us to a limited and insufficient extent.

I need not read the various extracts. Any one who has gone back to the documents of that period will be struck by the emphasis which at that time was put upon the national functions which the national parliament was to undertake.

THE CHAIRMAN: For the purposes of the record,

you might mention on this particular point the names of those from whom you quote.

MR. SCOTT: We have started with a quotation from the discussions that took place at the Quebec conference. On page 4 we quote an observation by the Hon. Mr. Coles of Prince Edward Island who moved:

"that the local legislatures shall have power to make all laws not given by this conference to the general legislature expressly."

It is interesting to note that Mr. Coles actually suggested and in fact moved that there should be no residue of power in the dominion, and his motion was unanimously negatived.

We then quote from Sir John A. Macdonald, from Sir George Cartier, the Hon. George Brown, D'Arcy McGee, the Hon. H.L. Langevin, the Hon. L.A. Olivier and the Hon. A.A. Dorion. The last two mentioned were opponents of Confederation, and yet they saw that confederation was achieving this strong central government with power to handle national matters.

THE CHAIRMAN: You have no doubt read through carefully all the confederation debates; I assume you have. Do you find anywhere any dissent from that interpretation of the Quebec Resolutions?

MR. SCOTT: I have been unable to find any, sir. I have not come across a single statement to the contrary. Not everyone made the same sort of statement but to my knowledge not one of them said anything contrary to this interpretation.

THE CHAIRMAN: If there was any dissent I should like to know from whom it came, because I have not had any reference to anything of the kind.

MR. SCOTT: If I had come across anything of that nature I would have mentioned it. In a footnote I have given references to the Hon. Mr. Tache, Mr. Galt and Mr. Scoble, who went so far as to say that what was being proposed was really a legislative union. And you will find "hear, hear" reported in the Confederation debates.

I then quote from Lord Carnarvon's speech in the Imperial Parliament -- and Mr. Adderley made the same kind of remark.

I have followed that interpretation of the confederation agreement taken from the speeches made at the time, and I have given references to extracts from Canadian constitutional authorities -- Clement, Lefroy, Kennedy, Bourinot and H.A. Smith -- all of whom in their writings put forward the view which I have indicated.

I have given references to parts of the British North America Act which carry out this idea. In fact, the dominion has powers not to be expected in a federation. It is unusual to find in the central parliament the power to declare local works to be to the general advantage, not coming within provincial jurisdiction. It is unusual to find on the part of central governments the appointment of Senators. All these features bear out the idea that the Fathers of Confederation were creating an unusual kind of federal system, which had more unity in it than others they might have been contemplating, particularly the one they were looking at -- the United States.

On page 9 I come to what I describe as the fifth of the national purposes which the Fathers of Confederation had in view. It is clear that, while allowing provincial autonomy in local matters and over property and civil rights in the provinces, they intended and hoped that

even in that sphere there would be progressive uniformity in Canadian law. In other words, they were not content simply to build a strong central government having power over national matters, but intended to eliminate diversity even within the field at that time conceded to the provinces.

COMMISSIONER SIRGIS: Except Quebec.

MR. SCOTT: Yes. The reason for omitting Quebec was that it was conceded as one of the minority rights that the basic civil law of that province being French, the law should be preserved. But the Fathers of Confederation saw no reason why in the common law provinces there should be great diversity in provincial law. They therefore put in Section 94, which has never been used since Confederation.

The effect of Section 94, if it had ever been used, would be to allow the Dominion Parliament to initiate legislation with respect to some particular phase of property and civil rights -- let us say unemployment insurance, for example.

The dominion might pass a law dealing with that subject and invite the provinces to accept it under the powers given the provinces in Section 94. If the common law provinces did accept, in accordance with the provisions of Section 94, that is to say, if they adopted verbatim the dominion act, the effect of Section 94 would be to have jurisdiction over that subject matter pass into the exclusive powers of the dominion. So that really we have in the British North America Act a method whereby the provinces can hand over to the dominion a portion of their own sovereign domain if they wish to do so. There can be no compulsion; it must be a voluntary move.

As I understand the Act, however, and here I am speaking without the guidance of judicial interpretation -- because the matter has never appeared before the courts -- the provision that:

" from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any Act shall notwithstanding anything in this Act, be unrestricted" ---

applies to Section 92; it means, presumably, that notwithstanding Section 92 the power in question shall be unrestricted.

THE CHAIRMAN: You are raising an interesting point which has not been drawn to our attention before in the way in which you are now presenting it. Section 94 reads:

"Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces. and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof."

The section would rather suggest, would it not, that the

object was to enact a uniform system? Your suggestion is that it might be applied to any particular subject.

MR. SCOTT: It says, "all or any of the laws relative to property and civil rights".

THE CHAIRMAN: Of course, there is no law at present relating to unemployment insurance in any of the provinces.

MR. SCOTT: No, but that would be a law relative to property and civil rights.

COMMISSIONER ANGUS: Has this been extended to the other provinces?

MR. SCOTT: It has been extended in my opinion, by the fact that the other provinces as they came into Confederation accepted every provision of the British North America Act except such as might have been varied by the agreement upon which they entered. So that those provinces, although this section is restricted to Ontario, Nova Scotia and New Brunswick, must now be regarded as being included in the provisions of the section, apart from Quebec.

THE CHAIRMAN: Your suggestion, as I understand it, is that the dominion might enact a law relating to unemployment insurance or any other matter of social insurance and that if adopted by all the provinces the law would then be valid throughout Canada, and thereafter the dominion might legislate with respect to that subject matter, but the provinces could not legislate further.

MR. SCOTT: That is my interpretation.

THE CHAIRMAN: So that if it were adopted by some only of the provinces it would apply to those particular provinces and they could not legislate further in reference to that particular subject matter. But if it were adopted by some and not by others you would have an almost impossible

situation, would you not in dealing with unemployment insurance.

MR. SCOTT: We are not advocating that this should be the method to be followed in unemployment insurance, because, as we say later in the brief, we think that it should be adopted as an amendment to the British North America Act. But that difficulty might be got over by a provision in the federal Act preventing it from coming into operation until the eight provinces had in fact agreed to it.

We are really citing this not for the purpose of suggesting that we should make great use of it, but rather for the purpose of indicating clearly what the people who framed the British North America Act hoped would happen as a result. They hoped that we should move towards national unity not only with respect to national matters but with respect to provincial matters in the common law provinces. And we quote Sir John A. Macdonald, who set great store by this provision. Indeed, he even contemplated the extension of it into the municipal field. For he says:

" It was understood, so far as we could influence the future, that the first Act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England."

On page 11 we point out that a beginning was actually made in 1869 to unify provincial laws. The Hon. J.H. Gray was appointed a commissioner to investigate the subject and he presented a report which is to be found in the Sessional Papers of 1871. It appears therefore

that they actually got to the stage where a commissioner was appointed to inquire into the possibility of unifying provincial laws.

Perhaps I might digress for a moment to make this observation. There is talk to-day of the necessity of unifying company and insurance legislation, and that is absolutely in accord with what was intended in 1867 but has never been accomplished. The suggestion is not a novel one; we are simply getting back to something that was contemplated at the time of Confederation and provided for in the British North America Act. And if the Fathers of Confederation deemed it necessary in 1867 to provide for the unification of laws with respect to property and civil rights, how much more necessary is it to-day, when that term has come to have a wider meaning than it had at the time of Confederation.

THE CHAIRMAN: On that point, and with regard to your interpretation of the words "property and civil rights", the Hon. Mr. Cahan recently delivered an address in which he discussed at length the interpretation of that term, and in that speech he made the same contention that you are making here. Have you read what he said?

MR. SCOTT: We had it before us, and as a matter of fact there is a reference to it in a footnote.

THE CHAIRMAN: Do you agree with his arguments? If you do, his address is available and I need not detain you by asking for your reasons for the view you have given. If Mr. Cahan's speech is not on record, I think we should have your reasons. If you agree with Mr. Cahan's arguments, and if his speech is available, we need not detain you on the point.

MR. SCOTT: I read his speech, and personally I agree with it entirely on that point.

COMMISSIONER SIROIS: You refer to Mr. Cahan at the bottom of page 11.

MR. SCOTT: Yes. As a sort of summary of page 11 we point out that in 1867 the Fathers of Confederation had in their minds the concept of a federal state with an especially strong government, recognizing and protecting minority rights, yet progressively moving towards greater unity. That was the sort of concept they had in 1867, and we submit that their ideas are sound even under the conditions that prevail to-day.

There is confusion now in Dominion-Provincial relations, but we feel that the confusion in the constitutional situation to-day is due not to any faultiness in the principles underlying Confederation in 1867 but to other things that have occurred since that time.

We go on next to discuss the obstacles to progress, by which we mean the progressive achievement of those ideals that have grown up since 1867; and we single out three in particular.

First is the retention of appeal to the Privy Council. I do not want to get into any long argument on that point. I would call attention to an article which we quote, written by the late Lord Haldane when he was plain Mr. J.B.Haldane. It is important for two reasons. It was written by Mr. Haldane for the Juridical Review at the time of the death of the late Lord Watson, as a tribute to the work which Lord Watson had done as a member of the judicial committee.

Mr. Haldane had had occasion to appear before the committee several times, and what he says is therefore important as summarizing the work of a great jurist who had had to interpret the Canadian constitution

considerably. It is important also inasmuch as it was written by a man who was himself to become a dominant figure in the judicial committee and who had been concerned very largely in the interpretation of the Canadian constitution.

The reason why we quote this extract is that Mr. Haldane makes no bones about admitting that the function of a judge on the judicial committee is to be more than that of a jurist; he must bring to his task some of the qualities of statesmanship. In other words, he must, as Lord Haldane says here, fill out the skeleton of the constitution. I might quote one or two extracts. He says:

" Lord Carnarvon's Confederation Act of 1867, which had given separate legislatures and executives to the provinces, had by no means completely defined the relations of these legislatures and their lieutenant-governors to the parliament and the governor general of the dominion. Two views were being contended for. The one was that, excepting in such cases as were specially provided for, a general principle ought to be recognized which would tend to make the government at Ottawa paramount, and the governments of the provinces subordinate. The other was that of federalism through and through, in executive as well as legislative concerns whenever the contrary had not been expressly said by the Imperial Parliament. The provincial governments naturally pressed this latter view very strongly. The Supreme Court of Canada, however, which had been

"Court of Canada, however, which had been established under the Confederation Act, and was originally intended by all parties to be the practically final court of appeal for Canada, took the other view".

He says that the Supreme Court took the view that the federal parliament was to be paramount. We have omitted some sentences which are not relevant. He goes on:

" Lord Watson made the business of laying down the new law that was necessary his own. He completely altered the tendency of the decisions of the Supreme Court. In a series of masterly judgments he expounded and established the real constitution of Canada."

COMMISSIONER SIROIS: "Masterly" is a significant expression.

MR. SCOTT: This does not imply any disrespect to the members of the judicial committee who have to perform a difficult function. The problem is that of a court which does not live among the people to whom the constitution applies -- the problem of filling in the gaps in accord with the spirit and the customs of that people. I agree with the statement of Mr. Haldane, as he then was, that a court, even a court interpreting ordinary statutes, has at times to assume in some measure the role of statesman; and it is perhaps too much to expect that a court not living in Canada and amongst Canadians and, as it were, sensing the situation here can round out the constitution in a way that shall be in accordance with the needs, the requirements and indeed the hopes of the people.

We cite this article because it is a confession or acknowledgement of that function of the final court

THE CHAIRMAN: Have you examined the Supreme Court decisions to which Mr. Haldane, as he then was, refers as supporting the other contention?

MR. SCOTT: I have, to some extent. Perhaps the most striking instance at that time in which the Supreme Court's view was overruled was the liquor prohibition reference of 1896, which reversed the tendency of the Russell case, which had gone entirely in favour of a strong dominion power -- the case that gave considerable meaning to the residuary clause with respect to peace, order and good government. The liquor prohibition case completely reversed that tendency with respect to the residuary clause. In that case the Privy Council overruled the Supreme Court of Canada.

THE CHAIRMAN: You are not speaking of Russell v. the Queen?

MR. SCOTT: No; I am referring to 1896 Appeal Cases, the liquor prohibition appeal.

THE CHAIRMAN: I remember the case.

COMMISSIONER SIROIS: Are you satisfied with the judicial committee's decision in Russell v. the Queen?

MR. SCOTT: I approve of the statement of law without wishing to argue the facts; I am not discussing the question whether that was a matter of national concern at the time. We have since been told by the Privy Council that we were facing national disaster in the matter of intemperance. Russell v. the Queen, however, ascribed to the constitution an active part in relation to the residuary clause.

The second of the obstacles to progress we mention on page 14 -- the growth of sectional feeling in Canada. We have given a brief historical survey of the spirit of nationalism in Canada. It was running strong

in 1867, and it is surprising to see how the Fathers of Confederation talked about building up a sense of nationality in the new nation. In the nineties, however, the feeling subsided and we had the interprovincial conference. At the turn of the century, with the building of the railways, there was another period of national sentiment and belief in Canada, and provincial rights were not so much in evidence. And during the war the dominion government had such a vital part to play in the life of the country that Canadian feeling centred more and more around Ottawa. Since the war we have gone back to another period of sectionalism in our opinions, and we bring that out on this page of the brief.

THE CHAIRMAN: What page?

MR. SCOTT: You will find it discussed on page 15. In our brief we make the point that we shall never have a sense of national unity in Canada unless the national parliament does things that vitally concern the interests of Canadians. If the things that touch Canadians most closely are handled by the provinces, then the provincial legislatures will be dominant in the minds of the people and we shall have sectionalism. There must be a national purpose in order to evoke loyalty and patriotism from all parts of the dominion.

If the national government does not more than act as a sort of collecting agency in matters of taxation, handing out the taxes without any conditions, and in addition supports a tariff and looks after national defence -- if it does no more than this, then I say we shall always have strong sectional feelings. There is no function in the national parliament, under such circumstances, which would unify the thinking of the country.

We go on to point out later two new important

functions which the national parliament must undertake and which in our opinion will evoke that kind of national unity and national purpose that is so lacking to-day. We conclude that section by saying that to-day Ottawa has become almost the seat of a foreign power -- a Geneva amongst sovereign states.

The third obstacle to progress of the kind conceived of in 1867 we deal with at page 16. The importance of this it is difficult to exaggerate. I refer here to the tendency towards industrial monopoly. We do not give any statistics to show the growth of this tendency, but we refer you to the price spreads report and our own book, Social Planning for Canada. I do not think I need spend time arguing the point that there is in Canada to-day a tendency to industrial monopoly. In some industries particularly it has gone very far. This means that there have grown up in Canada new centres of power and authority, not part of the formal constitutional structure, yet capable of shaping the destinies of the country in a manner that parallels, if it does not even exceed, the power of government. The price and production policies of great industrial monopolies vitally affect employment and unemployment; the mass buying power of a few large processors of agricultural produce, the interest and loan policy of a few banks or financial houses can make the difference between success and failure to farmers all over the country. Over a period of time economic policies decided upon by boards of directors on which there is no consumer, farmer, or labour representation determine the direction in which the economy grows.

Increasing control over the destiny of Canada is being acquired therefore by economic groups who are

outside and very often in opposition to government.

In the second place the growth of monopoly inevitably produces as a byproduct maldistribution of wealth. We refer to that on page 17. We would emphasize the fact that in 1937, when we had the worst drought in the dominion, when we still had on the average throughout the year between 900,000 and 1,000,000 people receiving relief in one form or another, and when it was perfectly clear that the wage rates in certain industries were still extremely low -- and in this regard we can cite evidence given before the Chevrier commission -- in a year, I say, in which these things existed we find that Canadian corporations were paying dividends to an amount greater than ever before in the history of Canada, when bond interest payments exceeded those we have ever known in our history.

In a footnote on page 17 we cite from the Financial Post certain facts with regard to bond interest, as worked out by some of our economists, showing that there has been a great increase.

In other words, while business in Canada may complain that it is overtaken, the fact is that 1937 has been the most profitable year for this portion of Canadian business that the dominion has ever known. We make this statement:

"There is a widespread impression that the average Canadian is comfortably off and a property owner. But all the analyses of the distribution of income and property in Canada, whether they be of bank deposits, of insurance contracts, of income payments, of the ownership of homes in cities, of the rate of growth of tenancy amongst farmers, combine to show that a few Canadians are very well off indeed and

"control astonishingly large amounts of property, and the vast majority of the people are poorly off and own a very small amount of debt-free property."

We have not troubled to give all the statistics in regard to each of these items; most of them are dealt with in Social Planning for Canada. When Mr. Mooncey comes before you he will give a report from the municipalities and will have figures in regard to the ownership of homes in Canadian cities. In Montreal only 15 per cent of the people who live in dwellings own those dwellings.

Montreal is exceptional in that regard, but without exaggerating in any way one can make the statement that there is a tendency for wealth to be maldistributed in Canada, and that is a byproduct of the growing tendency towards monopoly.

We say that it is the duty of governments in Canada to check these trends, and the only government capable of attempting this vitally important task is the federal government. Only the national government is strong enough to control the effects of this concentrated wealth.

To summarize my part of the presentation, I would say that after two generations under the Confederation agreement it can be said that three of the original five principal objects which the Fathers of Confederation had in view have been achieved. One is alive but none too secure, while two have been frustrated. The Union of Canada under the crown of Great Britain remains, and the rights of minorities are accepted as a basic part of the constitution, even though the extent of those rights gives rise to frequent debate. Those two objects have been successful. The preservation of parliamentary institutions has also been achieved, but democracy has deteriorated

in many respects in Canada. The reasons for this are, first, the increasing power of small minorities and the increasing maldistribution of wealth, which is making the accident of birth more and more important in the life of the individual Canadian. It is not an exaggeration to say that in the social aspects of our national life we were more of a democracy in 1867, when the differences in wealth were not so great, than we are to-day. The minorities in control of money can influence the political side of our life and thus in a sense threaten the workings of political democracy.

On the side of the relations between capital and labour, the growing monopoly on the part of capital gives it a greater advantage in dealing with labour. Capital is better armed than labour in the labour market and therefore -- certainly in our opinion -- the interests of labour are inadequately protected.

Of the two remaining purposes which I have mentioned, the purposes which the Fathers of Confederation hoped to achieve, one, a strong central government with effective residuary power, has been largely frustrated, and the other, the progressive unification of Canadian law in the common law provinces, has been totally unfulfilled.

I would conclude this part of the presentation with the statement that everyone of these purposes of 1867 was a sound national purpose, and we would submit that in selecting recommendations, you should select those that will tend, in your opinion, to carry out still further in the future in Canada these five purposes that are a part of our constitutional history.

THE CHAIRMAN: Would it be convenient at this point to adjourn? Will you be here to-morrow morning,

Professor Scott?

MR. SCOTT: I will stay over, sir.

(The Commission adjourned at 4.30 p.m.,
until 10.30 a.m., Thursday, January 20,
1938.)

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

REPORT OF HEARINGS

REPORTERS:

George Thompson
John Robertson
David Torry



OTTAWA, ONTARIO, JANUARY 20, 1938.

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ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, ONTARIO, JANUARY 20, 1938

The Royal Commission appointed to re-examine the economic and financial basis of Confederation and the distribution of legislative powers in the light of the economic and social developments of the last seventy years, met at the Parliament Buildings, Ottawa, Ontario, on Thursday, January 20, 1938, at 10.30 a.m.

PRESENT:

HON. CHIEF JUSTICE NEWTON W. ROWELL....CHAIRMAN

DR. JOSEPH SIROIS

JOHN W. DAFOE, Esq.

DR. ROBERT ALEXANDER MacKAY

PROFESSOR HENRY FORBES ANGUS

Commissioners

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Louis S. St. Laurent, Esq., K.C.

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R. M. Fowler, Esq.

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Secrétaire Français

Legal Secretary

Assistant to the

Secretary

FOR THE LEAGUE OF NATIONS SOCIETY IN CANADA:

Professor Norman A. MacKenzie

R. B. Inch, Esq.

FOR THE LEAGUE FOR SOCIAL RECONSTRUCTION:

Leonard G. Marsh, Esq.

F. R. Scott, Esq.

President

Past President

FOR THE CANADIAN TEACHERS' FEDERATION:

J. W. Noseworthy

Miss Jessie M. Norris

Mr. L. F. Titus

Chairman, Special

C.T.F. Committee

Member, Special

C.T.F. Committee

Member, Special

C.T.F. Committee

Room 268,
House of Commons,
Parliament Buildings,
Ottawa, Ontario,
January 20, 1938.

MORNING SESSION

The Commission met at 10.30 a.m.

THE CHAIRMAN: We will continue this morning with the brief of the League for Social Reconstruction. I think perhaps it would be better to have the whole Brief presented, and then the whole subject matter will be open for any questions we desire to put. I think you had finished, Mr. Scott?

MR. SCOTT: Yes, Mr. Chairman.

LEAGUE FOR SOCIAL RECONSTRUCTION

MR. LEONARD C. MARSH: Gentlemen, there is a direct continuity throughout the Brief. In no sense was that an historical interlude. We were concerned for the League to emphasize the principles and purposes which in our view actuated the Fathers of Confederation; but we are just as anxious to make it clear that these principles and purposes are necessary to-day. It is our conviction that the Fathers of Confederation had a definite purpose in mind. It is true that there were points on which there was room for debate, but we have taken the view that unless these purposes are defined in the year 1938, Dominion-Provincial relations must be difficult to define as well.

This morning we would like to put before you these new purposes which are additional to the original purposes of Confederation, and which to us seem to condition the whole problem of Dominion-Provincial relations.

In order to be precise and as helpful as possible, once again, with your permission, I shall refer to the Brief, perhaps a little more flexibly than yesterday, although I shall follow the Brief as I think it will be

a little easier and perhaps a little shorter if I do not follow it quite so rigidly.

What I propose to do is this: The purposes which the League sees as still important purposes in Canada, and new purposes, can be crystallized into two--the provision of a basic minimum of social security; and secondly, certain essential measures for the control and direction of Canadian economy. On these two things I would like to say a little more, and when we have done that, there is a third thing. We would like to make our contribution on the subject of taxation and debt in relation to that concept, because to us it is an important point that taxation and debt should be viewed in that particular perspective, and not as something to be taken up apart. That is the essential which we would like to put before you this morning.

The first of these new purposes is the provision of a basic minimum of social security. Social security, of course, can be quite vague. It means definitely to us that there are certain hazards in modern industrial society, of which Canada is eminently an example now, whatever it may have been in 1867, because the community has changed, because this is no longer the Canada of Confederation time.

There are certain things which are inherent in the world in which we live, and those hazards are hazards which can no longer be met by the individual and, we are prepared to argue, can no longer be met efficiently on a purely provincial basis. Those hazards are the hazards of unemployment, of old age, of sickness, of industrial accident, of crop failure in certain aspects, and, in some measure at least, minimum standards of living.

Those things are conditioned by the industrial conditions, and we want to argue that they can only adequately and efficiently be met by the national government.

We say that for three reasons. Not merely because the provinces are not in possession of sufficient revenue, because to us it is not entirely a revenue question.

The Commission, I am quite sure, will have many other Briefs on that question--the question of provincial revenue-- but to us that is not the only principle, important as it is.

There are two other things. One is that the lack of uniformity is something which has to be met in this year and in the future. So long as it is left purely to provincial initiative, you will always have gaps; you will always have inefficiency and overlapping in these matters. That does not mean, of course, standardization. It does not mean a rigid uniformity; but it may mean gaps which cannot inevitably be tolerated. I could cite a great many examples, but I do not wish to weary the Commission. Perhaps one is enough, because it is so important in itself and because Canada in the last few years has had very much experience of it. That example, of course, is unemployment relief.

Again, while it would be possible to spend a great deal of time talking about the difficulties and maladjustments in the field of unemployment relief, it is simpler for me, I think, just to refer to the Employment Commission, which has reviewed that problem, and in many ways has crystallized its views just on these lines; That the time has come when Unemployment Relief must be regarded as a national problem, that we have had inefficiency in administration, lack of uniformity in

standards and too much distress because the thing has been left to local responsibility in so many ways.

There are other examples, but there you have the principle that if Canada is to be a united nation, then in our social welfare measures we must have some degree, at least a basic degree of uniformity in that type of legislation. There is no reason why, if some measure of social security is provided in one province, it should not be available for the citizens of another province, who after all are equally citizens of Canada.

THE CHAIRMAN: You mentioned unemployment insurance, old age pensions, health insurance and what else?

MR. MARSH: Crop failures, to some extent.

THE CHAIRMAN: Crop failures, and industrial accidents. On that particular point of industrial accidents, we have not heard any dissatisfaction expressed so far, Mr. Marsh, with the operation of the provincial compensation systems in regard to industrial accidents. In all provinces where there is an industrial population of any extent they have these systems, and so far--of course, we have not yet heard from the Trades and Labour Congress--that question has not been raised before us. Is there any special reason why you say that should be included?

MR. MARSH: Only one reason, sir, We would agree, of course, with certain qualifications, that there is no particular quarrel about that particular subject, but the reason we mention it is because we are going to suggest that all these measures must be related together, that even though industrial accidents may be properly provided for in most of the provinces, nevertheless such measures need to be related to other social legislation. To us the problem of working conditions must be regarded as a whole if we are to get efficiency

in the integration of that legislation.

THE CHAIRMAN: Then do you include such matters as hours of labour, and weekly day of rest?

MR. MARSH: Yes, and holidays with pay, and matters of that kind.

Our third reason for emphasizing the importance of the national government dealing with these matters is that economic policy and social legislation cannot be divorced; yet there is a tendency, perhaps some people would say a very strong tendency in constitutional interpretations to make that division. But it is a fact that tariffs, international trade, central banks, their institution and policies, railway rates and certain other things are conceded to be Dominion functions, and yet unemployment, wages, working conditions or some aspects of them, and even certain aspects of agricultural difficulties are regarded as provincial functions. But we want to suggest that you cannot make that separation, that economic conditions are such to-day that if the Dominion has to deal with one thing, with economic control, and we leave to the provinces these effects of economic control, there are all sorts of possibilities of overlapping and mismanagement.

So to bring this part of our submission to a head, we would crystallize it in this way, that the Dominion must look to the formulation of a national welfare code. That welfare code is not intended in our minds as purely an industrial matter; it is not a question of catering for the industrial population alone. There must be some sort of balance between urban and rural populations. We do not call it a national "labour" code because we mean welfare, and we mean welfare in the sense of farmers and workers, urban and rural citizens

of the country.

To us that national welfare code means two things. It means the necessity of a critical survey of our social security legislation, both that which we already have and that which we do not have yet; the evaluation of standards, the filling in of the gaps, and the redistribution of the costs of these social services.

To us the problem of taxation and the cost of these services is not an absolute matter. It is far more a matter of distribution. To us the burden of taxation does not exist in that form--the aggregate of taxation means little. We want to suggest it is far more a question of what the taxes are used for and how they are assessed.

THE CHAIRMAN: Of course, there are many taxpayers who think that the aggregate of the taxes means a good deal.

MR. MARSH: Yes, I quite agree with you, and I would like to say a little more about that later, if I may.

THE CHAIRMAN: Certainly.

MR. MARSH: Dominion functions are essentially involved in certain aspects of this welfare code, and we would suggest that there should be a Department of National Welfare. We would suggest that there should be an amalgamation of the Department of Labour, the Department of Health, with possibly certain other functions, into a Department of National Welfare. With such a national welfare code, with Dominion functions at least so far as the minima were concerned, it would not mean that it would take over from now on every piece of social service there was, but it would be a body to which we could look for standards, a body which would set the principle, as it were, and we would like to see such a department as we

suggest dealing, perhaps gradually, with a great many of these problems--with unemployment certainly, with unemployment service and with some of the related matters--vocational training, hours of labour. Already there is a growing opinion that these things should be federal matters. None the less we want to reiterate that to us it is purely a matter of principle. It applies to other things as well. It applies to wages, at least to the principle of minimum wages. There must be room for local variations there, but nevertheless, the principle should be set by the Dominion, and not by the local areas.

THE CHAIRMAN: You recognize that there must necessarily be variations to meet varying conditions, but your contention is that the minimum should be fixed by the Dominion?

MR. MARSH: Yes.

THE CHAIRMAN: If the Dominion fixed a minimum, would there be any danger of pressure being brought to make that the maximum in certain sections of the country where the maximum might be higher than the minimum suggested?

MR. MARSH: Yes, I think there would be a danger of that, and I would simply say that it would be easier to meet that danger if the Dominion were clearly the authority to deal with the matter. If its authority were well defined, it could then exercise its influence--it would not be a dictator--to remove that anomaly. It seems to us that it would be easier for the Dominion to deal with that.

THE CHAIRMAN: How would the Dominion exercise its influence to correct that anomaly? Do you suggest it should do it by legislation?

MR. MARSH: Yes, in part.

THE CHAIRMAN: You would have a different minimum for different sections of the country?

MR. MARSH: Yes. It seems to me that in principle the administrative problem is comparatively easy.

THE CHAIRMAN: That is the problem they are trying to work out between north and south and east and west in the United States at the present time.

MR. MARSH: Yes, but here the principle has not been accepted, and we would urge that as the first step at least.

The Dominion government already has a great deal to do with pensions; and housing matters most certainly should come its control. I think we know from past experience in 1921 that the Dominion must have a great measure of control in housing. Without being autocratic at all, there must be Dominion standards if the housing problem is going to be treated efficiently. Certainly health insurance and medical services should be a Dominion function. There is a great deal to be done in that field. I could enlarge upon it if you wished, but I do not want to take up the Commission's time more than to make the point that the principle, a minimum standard, must primarily be laid down by the Dominion, that only in that way can we be sure that Canada will be handled as Canada, and not as groups some of which are going to be better off than others. It is quite illogical that British Columbia should be moving towards a health insurance scheme while other provinces have none. There is no reason, if we believe in a united Canada, why the citizens of Canada as a whole should not have some of the same benefits.

COMMISSIONER ANGUS: Would that mean that British Columbia ought not to be free to proceed with its scheme until the rest of Canada decides it is necessary for the

whole country?

MR. MARSH: I would say no. Perhaps I misunderstand the question. I would be all for British Columbia's initiative, and the League would be all for it, but we would prefer some revision of constitutional powers which gave the initiative primarily to the Dominion, because we are quite sure that British Columbia would not suffer under those circumstances.

COMMISSIONER ANGUS: The question is, would Dominion control mean something of that sort? Would it not delay the scheme for British Columbia of its own initiative? Would it not take a much longer time to convince the Dominion electorate that such a scheme was desirable than it would take to convince the electorate in a province situated as British Columbia is?

MR. MARSH: That is true; it is impossible to deny that. None the less we are trying to take the Dominion view. We are trying to suggest that even if British Columbia is in some respects more progressive it is not nationally a satisfactory situation if that province is allowed to go on untouched, as it were. I think that is all we can say. We would not for a moment deny the right of British Columbia to proceed along the same lines, but we are concerned about the Dominion situation. I am afraid I cannot say anything more than that.

THE CHAIRMAN: Would this be stating your view correctly, that the movement in British Columbia, assuming that it represents a real popular demand, should rather exert itself in creating a general sentiment throughout Canada for such legislation than finding satisfaction in a provincial Act?

MR. SCOTT: If I may interject, Mr. Chairman, later in the Brief we are going to suggest that this power which

we think should be added to the Dominion power to control social legislation might well be made a concurrent power under the constitution, a concurrent power such as exists with respect to agriculture and immigration to-day; so that the failure of the Dominion to act would not prevent a province from proceeding of its own initiative, as for instance British Columbia proceeding with health insurance; and further, that even when the Dominion acted and established a basic minimum, which we think it should establish, the province would still be free to experiment on its own, over and above that minimum. In other words, we think it possible to preserve the area of provincial initiative while retaining minimum standards and control by the Dominion. That would leave the electorate of British Columbia free to go ahead, if they wished, in this instance.

COMMISSIONER ARGUS: To take this particular example, where you have a small majority by plebiscite in British Columbia in favour of health insurance, would not that small majority in a province with a population of 800,000 carry an almost negligible weight as regards Dominion policy? The question is, should British Columbia be free to act by itself alone on the strength of this small majority, or should it have to wait until a majority had been obtained in the whole of Canada, which might take a very long time?

MR. SCOTT: We have stated in the Brief that British Columbia should not have to wait; and in order that British Columbia should not have to wait, and at the same time the Dominion be free to act, the only solution for that difficulty, we submit, is to make the powers of the Dominion on certain social legislation concurrent and not exclusive powers. That would enable both the pro-

vince and the Dominion to act.

COMMISSIONER SIROIS: Under the British North America Act, where you have federal legislation and provincial legislation on the same subject matter, the federal legislation prevails in case of any conflict.

MR. SCOTT: The federal legislation would apply so far as it goes, but the province would still be free to have its own legislation so long as it did not conflict with the Dominion legislation.

COMMISSIONER SIROIS: In case of conflict undoubtedly the Dominion legislation prevails.

MR. SCOTT: Yes, but with concurrent posers, where there is no conflict, the provincial legislation would stand alongside that of the Dominion.

MR. MARSH: If I may, Mr. Chairman, I will pass now to the functions which we think should be written into the constitution as being essentially Dominion functions; that is, the control and direction of economic activity. . I am quite sure that is even vaguer to some people than a basic minimum of social security. We are quite aware that it is a many-sided matter and that there is no one panacea for the control of economic activity. But we do mean by it, certain very definite things, which once again can be crystallized, I think, in two ways.

First, the exploitation of our national resources-- and I say "national" and not "natural" resources, because we mean something a little more than that. Our national resources should be exploited, and our national production should go on in an orderly manner, and go on to the social advantage of the majority of our Canadian citizens. The principles behind this idea are most well known with respect to reforestation. Everybody knows what good lumbering and what bad lumbering means. We have had plenty of ex-

amples in Canada and elsewhere of what bad lumbering is, and we know the principles of good lumbering. We would like to suggest from the League that this principle applies to most business. To some people this is a relatively new idea. We have to consider the orderly and advantageous exploitation of other resources--better labour, better skill, and better savings, which are just as much our national resources as are our minerals and lumber. We want, if we can, to enlarge that idea and redress the balance which appears in public opinion at the moment. We are very much concerned about the fate of our mines and our timber, but we must enlarge that idea, and once we do, there is only one power which can have enough authority to take any steps towards its direction and control.

Secondly, there is another aspect to this problem. Leaving the matter to provincial jurisdiction leads to a number of difficulties. We have suggested that a number of superficial conflicts, at any rate, which appear between the provinces are hinged upon the possession, or so-called possession, of differing natural resources. From a broad Canadian point of view it should be absurd to speak of rich provinces and poor provinces. The fact that some provinces have more natural resources than others should not present any problem from the Canadian point of view.

Then you come to the problem of Taxation. We say on page 27, for instance, that we want to see a redistribution of taxes in some measure rather than a cutting-down. We think that is the main problem. We say;

"Provinces should be treated with equal consideration in the redistribution, for the large incomes made by a resident in one province are usually made through operations which extend throughout the country. The earnings of the Flin Flon mines or the Nova Scotia steel

"mills, for example, may go to swell the taxable income or the estate of a resident of Quebec or Ontario, which provinces have no special moral right to this taxation."

COMMISSIONER ANGUS: Have you any evidence as to how widespread that is?

MR. MARSH: My personal impression is that it is not so widespread. There is a tendency for people who are getting their income from business in Ontario or Quebec to live in those provinces. None the less there are plenty of other examples, and if we are considering the problem of redistribution of taxation, it seems to us that we should consider also the question of the location of the natural resources. In other words, it brings us to this point, that the Dominion must have some power to make regulations for the exploitation of resources. As a matter of fact, a good deal has been exploited. The Dominion has some powers at any rate, to control agriculture, and there is no reason why its powers should not be extended to apply to a great many other things, but the tendency has been, I think I am right in saying, in the other direction. In so many fields we find the provinces have complete control. Without making that a matter for acute conflict, it seems to us there is room for a little more re-assertion of the Dominion's power in that field.

COMMISSIONER ANGUS: To take your example of lumbering, would not that relate itself very closely to the question of provincial revenues? For instance, if one type of lumbering is permitted, timber limits can be disposed of commercially and the province collect its royalties much more easily than if the regulations are more stringent with a view to preserving lumbering

over a long period. Would your proposals involve Dominion regulations which might have the effect of losing to the province revenues which they had relief on?

MR. MARSH. Yes, we would suggest that the principle is a two-edged one of a common return, as it were, for Dominion control over the exploitation of resources--over lumbering, if you like, in British Columbia. There would be a quid pro quo in some more flexible form of Dominion subsidies. That is the obvious way, I suggest, to meet the problem. Both of these things in our view would strengthen the authority and the general welfare power of the Dominion.

The second reason for the positive control of economic activity by the Dominion is that economic stability is now one of the most pressing problems that every state has to meet. Economic stability means essentially an absence of booms and depressions. There is no agreement as to how that should be done in detail, but there is a growing agreement that control must be exercised to avoid them. Everybody agrees in some measure that we owe depressions to unregulated finance, mistakes in investment, and in some measure at any rate to the uncontrolled exploitation of industry, whether it is a matter of unfair competition or monopolistic domination, or something of both, and also to the mal-distribution of the gains of industry. All economists are agreed in some measure at least on that, and that it is a question of the allocation of the proceeds of production both in booms and depressions which has something to do with their causes. And because of that again we are led to advocate a positive rather than a negative state. We are quite aware that this idea is less accepted than our idea of social security as a national function. We are aware, too,

that regulation is often called regimentation, but our case is simply this, that regulation, however much it may worry some people, is a matter of political necessity; it cannot be avoided. If there is no control at all of economic instability, the social consequences are too grave, and no State in this modern world can be a laissez faire State any longer. Unemployment, drought, crop prices--these are three examples which prove that.

THE CHAIRMAN: Which prove what?

MR. MARSH: Which prove that is impossible not to have any control at all. It is impossible for the Dominion government to stand aside and to say that economic control is not a part of the government's power or a part of government functions.

THE CHAIRMAN: You mean in those three fields, all matters of public concern, the Dominion has found it necessary to intervene. Is that the point?

MR. MARSH: Yes.

We would say, secondly, that this development of Dominion control is inevitable, that it cannot be confined to these immediate emergencies, that it has already started in a great many ways in which Canada has, in many cases, taken the lead. We say on page 23:

"The Bank of Canada, the Tariff Board, the Wheat Board, the Trade and Industry Commission, the Board of Railway Commissioners, and similar regulatory bodies are steps in this direction. But we are only at the beginning of this movement, which is destined to carry us further and further in the direction of state intervention in economic affairs no matter what government holds office at Ottawa. If such intervention is to be efficient, and is to achieve its purpose, it will have to be on a

"national scale. It will therefore have to be a function of the Dominion Parliament."

THE CHAIRMAN: Of course, it is not essential to your argument, but have you suggested in your Brief the nature of the further control that should be exercised in the national interest?

MR. MARSH: Yes, in a general way, and also more specifically. In a general way our request is that Dominion powers should be clarified and enlarged. We refer to the decisions which have been made in respect of Dominion and provincial powers. That will be found on page 24. We suggest that judicial decisions have seriously hampered the development of these powers that are necessary to modern Canada, that in effect Canada should have a modern constitution. The example cited on page 24, the Dominion Marketing Act, is perhaps the best one to take as an illustration. There was an attempt to control the marketing of agricultural products. There are pro's and con's for the economics of that proposal; we are perfectly aware of that. Nevertheless the Dominion government passed, and the provinces also passed, legislation for the control of marketing, and that procedure was upheld by the Supreme Court.

THE CHAIRMAN: No, the Dominion Marketing Act was held invalid by the Supreme Court because it covered transactions wholly within the province as well as interprovincial and international trade.

MR. MARSH: I see.

THE CHAIRMAN: And that judgment was confirmed by the Privy Council.

MR. MARSH: I withdraw that part of my remarks.

At any rate, the Dominion and the provinces had agreed on certain principles, and yet when the legislation was tested

in the courts, it was declared unconstitutional. To us, therefore, it is not always a question of transferring power from the province to the Dominion. It is a question of making clearer the Dominion's powers, of placing the Dominion's powers beyond doubt, and there is still room for provincial participation in this essential task..

COMMISSIONER ANGUS: Would you be in favour of enlarging provincial power in some cases? My recollection is that the British Columbia Marketing Act was thrown out on the ground that it involved indirect taxation.

MR. MARSH: Yes, and that is an example of how absurd a position we get into because of these interpretations. It is clear that a revision or clarification of powers with respect to the regulation of trade and commerce is very necessary. Perhaps that is the key point of this whole argument.

THE CHAIRMAN: Of course, the Marketing Act may illustrate very well the point you are stressing. Undoubtedly the Dominion has the right to legislate with respect to interprovincial and international trade, and in so far as marketing involves interprovincial and international trade, it falls within Dominion competence. But the Dominion legislation was held ultra vires because it also included marketing within the province. I have no particular knowledge of the subject of marketing, but I can quite conceive the possibility that legislation might be largely ineffective unless it did include the whole field of marketing and was not limited to interprovincial trade and international trade.

MR. MARSH: That would be substantially our point, sir, that as an economic problem, it must essentially come within the powers of the Dominion.

May I just bring this section to a conclusion with

one or two points on provincial powers. We do not wish it to be thought that we are advocating that the Dominion should swallow up all powers of economic control and leave to the provinces none. We are anxious to point out that exclusive powers deal with local matters would remain with the provinces. We summarize this point on page 30. We say that the administration of a country like Canada must obviously always demand some kind of decentralization. It can never be dealt with as a more or less unified State in which distance is of no account. None the less, decentralization does not mean and should not mean provincial chaos. Administrative necessities are one thing; the need for centralized direction is another, and the point we suggest is that Dominion powers might be concurrent rather than exclusive.

If I may, I would like to read one passage from page 30 which seems to us important in the discussion of this problem:

"One of the assumptions behind the provincial rights cry is that in some mysterious way it is more democratic to give power to provincial governments than to the central government. This may have been true in the early days when local communities were comparatively isolated and before the whole country had been economically bound together. To-day when the economic problems are nation-wide in scope, anything which deprives the national government of effective power to deal with them is really undemocratic. The identification between local autonomy and democracy is largely out of date.

Another common fallacy is the identification of provincial rights and minority

"rights. These two kinds of rights are quite distinct to-day, though when practically all French Canadians were in the Province of Quebec they were more closely assimilated in fact. A provincial right is a right or power belonging to a province, irrespective of its pre-dominant race or creed. A minority right is the right of some minorities in Canada to certain educational and linguistic guarantees written into the B.N.A. Act. Taking away provincial rights does not necessarily endanger minority rights; indeed, now that the French Canadian population is more widely spread in Canada it may well be contended that their minority rights will be better protected if provincial powers are curtailed. (1) Historically it has been true in Canada that minority rights have been more endangered by provincial action than by Dominion action." (1) The Abbe Groulx once pointed this out: see La Confederation Canadienne. p. 188.

It remains for us to say something about our approach to the problems of taxation and debt. We do not propose to put before the Commission a detailed set of recommendations, but once again we are particularly anxious to postulate certain principles which we feel have been somewhat neglected in current discussions of the problem. We wish to urge that taxation questions cannot be treated as isolated questions. They must be related, along with the problem of debts and public finance, to the stability and progressive development of the national economy as a whole. To argue that a certain tax should be lifted in order to enable some group to extend their business or to recover is really the same sort of thing, in our view, as putting on a tariff to enable some group to set

up or expand a particular industry. That means that these questions cannot be treated in isolated fashion, entirely on their own merits.

I should like to refer, if I may, to an authority as great as Sir Arthur Salter on this problem, in his recent book "World Trade and its Future", where he makes the point very clearly that the difficulty about tariffs has been that they have been built up piecemeal, and that if a country is now to reorganize its international trade policy it must review trade and tariffs and the taxation structure as well, something in which most countries have been very remiss. Taxes must be considered alike with tariffs, subsidies, rebates, and other fiscal advantages and disadvantages. They are all matters of public policy, and until the whole is considered it is impossible to say that certain taxes should be raised or lowered. It is not possible, in our view, to submit a complete argument about any one single tax, because the repercussions are much greater.

Most important of all, we would like to emphasize that a tax must be evaluated by its incidence and purpose. A tax is not simply a net reduction in the national income. It is a question of transferring income, and that point is of fundamental importance. It is true that some taxes are merely for revenue purposes. They are in rather a special category. But most taxes have some social purpose. It may be difficult to say just what that purpose is, but at least an attempt must be made to define it before we decide that a tax should be removed.

We would suggest as a first step towards reversing the current opinion widely held that government is merely an organization which imposes and collects the taxes, that the government should make it quite clear that it is

giving some measure of social security in return for that revenue, and so far Canada has not gone very far in that direction. Once it becomes clear that taxes do have a quid pro quo, then the nation as a whole is rather less apt to assume that taxation per se is a bad thing. And finally, of course, there is the manner in which taxes are raised, which we must consider when deciding whether they are bad or good. Does the tax bear most heavily on the people best able to pay, or does it bear most heavily on those who are least able to pay? Admittedly these questions are hard to determine, but they are much easier to determine than the truth or falsity of the statement that all taxes are a burden just because they are taxes.

THE CHAIRMAN: You have said that taxation is a means of redistributing wealth. One can readily see that income tax, in its higher brackets, and succession duties fall within that category. What other taxes do?

MR. MARSH: Very few, perhaps. What we would suggest is that many of our taxes are redistributing wealth, but in undesirable ways. The sales tax is one of the best examples of a tax which falls more heavily on people with a low income. It is redistributing income, as other taxes must do, but in a bad way that cannot be defended from the point of view of the welfare of the people as a whole.

We would like to refer you to page 26 of our Brief, where we say:

"Complaints about the total burden of taxation in Canada must not be taken too seriously.

We have already pointed out that this has been the most profitable year the security holders of Canada have ever enjoyed, and a comparison of tax schedules in Canada, New Zealand, and

"Australia will show that, so far as income and inheritance taxes are concerned, moderately well-to-do and wealthy Canadians are treated comparatively leniently."

THE CHAIRMAN: Just on that point, are the Australian income tax schedules, in the higher brackets, higher than Canada's? I was under the impression that the Canadian tax is higher, but I may be wrong.

MR. MARSH: We have tried to bring those figures together, and I think I can answer that question in a moment.

THE CHAIRMAN: I thought the same remark applied to New Zealand, too, but again I may be in error.

(Page 2830 follows)

MR. MARSH: Our contention depends in part upon the general burden, and not entirely on the higher brackets; although, of course, that is one of the points that must be discussed.

MR. SCOTT: The total amount raised in New Zealand on income and inheritance tax is considerably higher per capita than in Canada, although the actual upper brackets are somewhat similar.

THE CHAIRMAN: One can understand the amount raised may be higher, because the average income may be higher. We shall have to check that.

MR. SCOTT: We have not figures here as to the actual top brackets in both instances.

COMMISSIONER DAFOE: Are the inheritance taxes in Australia federal or state?

MR. MARSH: I am sorry, I do not know that, Mr. Dafoe.

MR. SCOTT: I have not that information.

MR. MARSH: We have one further point to make about taxes, and that is that part of the problem is to increase the amount of revenue of the dominion government, and through that possibly the provincial governments. It is a double problem, as we see it. It is not purely and simply a problem of raising taxation. If you postulated it that way it is meaningless. But even when consideration of the incidents and their purpose has been taken, to us the problem which Canada must face is this: In part it is a problem of readjustment of more efficient collection and distribution of taxes. One of our specific suggestions is that inheritance tax in Canada should be collected by one agency, preferably a federal agency, and then redistribution could follow from that.

THE CHAIRMAN: Is that solely because it provides a better method of redistribution or because it would be more efficient?

MR. MARSH: Primarily because it would be more efficient, as it would prevent the possibility of double taxation and overlapping, and even possibly reduction; primarily efficiency, but secondly because the federal government is in the best position to decide on rates of distribution. Thirdly, we think it is a problem of finding new sources of revenue. We as a league advocate higher taxation on the higher income brackets and a more extended application of the inheritance tax. Fourthly, that the government when it needs revenue, should consider certain forms of profitable enterprise. May I refer you now to the second part on page 28, which reads as follows:

"In considering ways and means of implementing government revenues without increasing taxation we would urge the adoption by the Dominion, and the provinces, of the procedure of nationalizing profitable economic enterprises which lend themselves to government operation. Already in Canada the provinces depend on the proceeds of liquor distribution for a considerable portion of their revenues. Liquor production would be a continuous source of profit also as a state monopoly. Many provinces and municipalities operate hydro stations successfully; public ownership could be extended here. In Sweden, the state tobacco monopoly is highly profitable; revelations before the Price Spreads Committee a few years ago showed that there are large profits to be made out of tobacco in Canada. Under a Dominion

monopoly these could be used to finance government services. Formerly, in English constitutional history, the king was expected to "live on his own"; today we can re-introduce the idea if we promote state enterprise in profitable fields of economic activity.

THE CHAIRMAN: You suggest liquor and tobacco. Can you suggest any others?

MR. MARSH: There are several possibilities. I think we would prefer to suggest liquor production and possibly matches and tobacco as illustrations. There are certainly several other examples.

THE CHAIRMAN: Just take matches. In what country of the world is that a government monopoly? It is in several, I know.

MR. MARSH: There are government monopolies of sale, of course, in a number of countries, particularly France. The only one I am certain of, is the French monopoly.

THE CHAIRMAN: In what countries is tobacco a monopoly?

MR. MARSH: Sweden.

THE CHAIRMAN: Sweden?

MR. MARSH: Yes. It is of some interest, because the government took over the production and sale of tobacco a good many years ago to finance old age pensions in Sweden.

THE CHAIRMAN: Sweden did?

MR. MARSH: Yes.

COMMISSIONER ANGUS: Have you evidence to compare the profitability of that monopoly with that of the excise tax on tobacco?

MR. MARSH: No, I have not, but it would be an interesting thing to have. Our hypothesis is that it

would be more valuable, there would be a greater source of revenue, but it would not be possible for me to say we can prove it. We have just one more point to make and that is primarily on the question of public debt.

You will have had a great many proposals placed before you in reference to private debt. All we have suggested on that subject is there is more room for the consideration of organized plans of debt reduction; that is, private debt reduction, particularly through the reduction of interest rates in one way or another. But we are not putting that forward as our chief point of emphasis. We would prefer to say a little more about public debt and to make one or two of the qualifications which we suggest apply also to taxes.

We would like to suggest, first of all, that not all debt is unproductive. Everything depends upon the expenditure of the investment and its use. There may be many government debts that are not productive, but the distinction between productive and non-productive debt must be kept in mind.

COMMISSIONER DAFOE: Illustrate that. What are the productive aspects of debt?

MR. MARSH: If a debt, for instance, were incurred for revenue producing works of one sort or another it could be classified as a productive debt. Housing is a good example. If it is productive it is more properly called an investment. There are debts which have been entirely unproductive debts and misguided, but it would be the first part of wisdom to distinguish between the two.

THE CHAIRMAN: The nationalization of railways has not led to any extensive government profit on operations Mr. Marsh.

MR. MARSH: No, sir; that is quite true; although

we would like to say this: Debts again must be distinguished as between those more recently incurred, and partly because of the depression when governments' finances are in a bad way and those which are legacies of past excesses. Some of these legacies should be considered as being comparable with business debts. Private business does write down its debts on a great many occasions, but a government, unfortunately, has to maintain what is known as 'the sanctity of contracts'. We would rather suggest that a government should have the power to write down its debts, at least, to the same extent as private business; that the sanctity of contract cannot be maintained so easily as it is sometimes assumed.

COMMISSIONER ANGUS: Are you suggesting that we can go back over our debt and earmark some of it as having been incurred for a good purpose and some of it as having been incurred for a bad purpose, and write down one part of it and not the other?

MR. MARSH: No. Of course, it would be quite impossible to tabulate it so easily as that. Nonetheless there is a distinction. I am quite aware of the fact that debts change hands, of course, which makes it very difficult. But when you have the problem of declining revenues and changing economic conditions in many sections of the community, it may be necessary to make certain decisions.

COMMISSIONER ANGUS: Do you mean to suggest that anyone who buys government bonds is morally responsible for the way in which the government is using the money which it derives from those bonds?

MR. MARSH: No; but by debt reduction we mean a capital reduction and interest reduction, and if that is to be done at all all these things must be taken

into consideration; that if we are to have a debt conversion or a debt reduction it must be regarded as a national effort. Of necessity some people will make sacrifices greater than others. If we regard it as a national emergency first and deal with it as equitably as possible, I would say that none of us would commit ourselves to the proposition; but we can make this distinction. We would like to urge, if we may, that if debt is a national emergency, it should be regarded in that light; that if sacrifices are necessary, then, some of these decisions must be attempted in whatever way possible.

COMMISSIONER ANGUS: If you are ^{not} prepared to make the type of distinction you have suggested, then it comes to this: The person who buys government bonds must take his risk of having them reduced at a later period because the government had previously borrowed for some less worthy purpose.

MR. MARSH: I would suggest ^{it is} somewhat easier than that, because the matter of time enters into it. Obviously, if you are going to have a scheme of debt reduction you would be quite right, perhaps, in mentioning the distinction of time. People who bought recent bonds should have a little more guarantee, perhaps, than those who purchased previous ones. It is a technical problem and difficult of solution, although it is not insuperable. I refer now to the question of deciding equity in regard to the different holdings. It is very difficult. If we are so embarrassed, as I assume we are, when the necessity arises for the writing down of certain public debts then, it seems to me, we must be forced, perhaps unwillingly, to try to make some of these decisions.

COMMISSIONER ANGUS: When you say: "Certain types of public debt", can you give an illustration of two types

of debt to be treated differently?

MR. MARSH: Well, certainly, if we have housing debentures or something of that sort, it might be fair to expect that they should be subject to loss reduction than shall we say, some outstanding results of C.N.R. capitalization. I do not wish to be committed to that too much; and we are suggesting, after all, no specific proposal other than that the matter should be considered far more than it has been. It is obviously a job for an expert tribunal. I understand that the commission itself is making some research into the holdings of debt in Canada, and it would be much easier to make more definite statements about that when we have these figures.

THE CHAIRMAN: My difficulty is that the principle you are enunciating as well as the idea of the conversion of debt and the comparing of the position of a government to that of a private individual is hard to follow. The private individual cannot write down his debt unless he goes through the bankruptcy court or gets the voluntary composition of his creditors. That presupposes his inability to pay his debt. That is the essential basis upon which he gets his composition. How do you suggest a government should be dealt with? How are you going to determine it? Take the dominion, as an illustration. How can you determine the dominion is not able to discharge its entire obligations, with its unlimited taxing power? Cannot the dominion discharge all its obligations even though they may have to make a capital levy?

MR. MARSH: I can best answer that by getting in line with our brief, which is to this effect. We wish to suggest that the possibility of a government adopting the same position as business is not entirely out of court. Nonetheless, what we really prefer to emphasize is that if debt is to be reduced it should be reduced through

a levy. We are not advocating as our principal point that the government go into bankruptcy; we are advocating that the straightforward way of debt reduction is through a debt redemption levy of some form or another. I would prefer, with your permission, to put myself on record in that regard. The point which seems to us to meet the situation better is a specific levy or a specific means of paying off debt, not to declare the government's inability to meet payments. We have suggested a special profits tax as one possibility and a special debt redemption levy as another. We might add to that, that more recently a special appropriation of inheritance tax has been suggested for the same purpose.

To crystalize that, if I may, we are much more concerned in making this point; if public debt is the obstacle to recovery and other aspects of our economic set-up, the only way to meet it is to reduce debt, and there is no other way than through this parallel with business, which I have brought in as a matter of preamble; there is no other way than a specific levy. In our book "Social Planning for Canada" we have examined some of the aspects of special debt redemption levy and we wish to suggest here the possibility of a special profits tax, in view of the position of dividends in recent years.

THE CHAIRMAN: To prevent misunderstanding I should perhaps say that municipalities and provinces are not in the same position as the dominion in that their taxing power is limited, much more limited, and the provinces and the municipalities may find themselves in a financial position where they could not possibly meet their obligations with their present taxing power.

MR. MARSH: Yes.

THE CHAIRMAN: That is theoretically possible.

MR. MARSH: Yes. If it meets with your approval, we should like to conclude merely by bringing together our chief recommendations contained in this brief. They appear on page 33, and are as follows:

" 1. The treaty making and enforcing power should be placed exclusively in dominion hands, including the power to enforce all kinds of international conventions. Canada should be a single nation in international affairs.

2. A National Welfare Code should be adopted by the dominion, after the necessary amendments to the B.N.A. Act, but leaving the provinces concurrent powers in powers in c ncurrent cases. This should cover all the most important subjects of social legislation. The most pressing are unemployment relief, employment exchanges, unemployment insurance, crop insurance, health insurance, old age and other pensions, minimum wages and maximum hours, weekly day of rest, child labour, holidays with pay, industrial disputes, and the right of association.

3. The Dominion power to regulate trade and commerce should be enlarged again to include a power to make general regulations for the whole of Canada, including control of agricultural marketing."

THE CHAIRMAN: Do you suggest that that meaning is embodied in the B.N.A. Act?

MR. SCOTT: You may remember in the Parsons Case it was suggested that the power included the power of general regulation throughout Canada. It was there

in obiter, and in my view that was the original intention. Now, it has been restricted to international and inter-provincial trade. We think there is room for the general regulation of trade as distinct from these two.

MR. MARSH: I continue with the recommendations.

" 4. Taxation should be used as an instrument of economic and social policy. Its distribution is far more important than its aggregate amount. It should aim to redistribute wealth and to share national burdens and benefits fairly. It should be placed far more heavily on accumulated wealth and far less on wage earners and farmers. To supplement government revenues, additional profitable forms of economic activity should be socialized. The Dominion should collect all income and inheritance taxes and distribute a portion to the provinces on a basis of equality. On no account should taxation be reduced through the curtailment of social services.

5. The national debt should be progressively reduced, by methods such as an excess profits tax devoted to this purpose, a direct general reduction after the Australian model, or the imposing of a Debt Redemption Levy.

6. To clear up a doubtful point of constitutional law, the B.N.A. Act should be amended so as to make it clear that when the Dominion and all the provinces have cooperated to enact a particular legislative scheme, that legislation shall be valid.

Finally we would like to repeat a remark of the Hon. T. D'Arcy McGee, made during the Debates on Confederation, which we believe is true of

Canada today: He said:

"The principle (of federalism) itself seems to me to be capable of being so adapted as to promote internal peace and external security, and to call into action a genuine, enduring and heroic patriotism."

COMMISSIONER SIROIS: Professor Marsh, I understand on certain matters of concurrent jurisdiction you are ready to give certain powers to the federal authority and certain powers to the provincial legislatures. Are you sugar coating the pill for the provinces? Because as a matter of fact you will admit that the federal parliament can nullify any legislation of the provinces on these matters, since the B.N.A. Act says, in regard to the concurrent jurisdiction in certain matters any provincial legislation "repugnant (1) to any Act of Parliament" shall have no effect. (Section 95, B.N.A. Act.). That would mean that in time the federal parliament could set aside and nullify any provincial legislation. You do not grant much to the provinces by giving them concurrent jurisdiction. Do you see my point?

MR. SCOTT: May I answer that?

COMMISSIONER SIROIS: You see my point?

MR. SCOTT: Yes. Let me take a specific example.

Supposing the dominion had concurrent jurisdiction over minimum wages. The dominion might establish a basic minimum with the different sections of Canada. The provinces could then, if they wished, adopt their own minimum wage legislation equal to or above that of the dominion.

COMMISSIONER SIROIS. That is what I mean.

MR. SCOTT: They could establish a higher

minimum, if they wished.

COMMISSIONER SIROIS: But not lower.

MR. SCOTT: Not lower. Nullification only occurs on the part below the minimum; so the part above the minimum is still there for practical experimentation.

COMMISSIONER SIROIS: The federal legislation prevails when the provincial legislation is repugnant to federal legislation.

MR. SCOTT: The area of freedom is still very great for the provinces. Take hours of labour. If the dominion established a 48 hour week and an 8 hour day the provinces could then, if they wished, go higher.

COMMISSIONER SIROIS: They would be free as long as they did not pass legislation repugnant to the dominion legislation.

MR. SCOTT: Provided they did not go beyond.

COMMISSIONER SIROIS: The provinces would be restricted to the federal legislation.

MR. SCOTT: Only in the minimum portion.

COMMISSIONER SIROIS: No. Take any legislation you like. If the federal parliament passes legislation and the provincial legislatures pass legislation that is repugnant to the federal legislation, the federal legislation would prevail over the provincial legislation.

MR. SCOTT: To the extent of the repugnancy. Take the example I have given. Suppose the dominion establishes a basic minimum rate. The provinces can go above it, or come down.

COMMISSIONER SIROIS: That would apply to any matter on which you would give them concurrent jurisdiction.

MR. SCOTT: We suggest that in order to allow the provinces the right to go ahead.

COMMISSIONER SIROIS: They would not be free, as a matter of fact.

MR. SCOTT: They would be free to have health insurance when the dominion had not,

COMMISSIONER SIROIS: In that respect, but otherwise the federal legislation would prevail; so they are not free.

MR. SCOTT: Quebec would be free to adopt health insurance without waiting for the dominion.

COMMISSIONER SIROIS: I was not speaking of specific cases.

MR. SCOTT: There will be a wide area of freedom.

COMMISSIONER SIROIS: Providing it is not repugnant to the federal law?

MR. SCOTT: Yes.

COMMISSIONER SIROIS: I do not think that is freedom.

MR. SCOTT: You could go ahead and adopt health insurance in Quebec without waiting for the dominion. It would meet the case cited of British Columbia, which wants to experiment, as was mentioned by Commissioner Angus.

COMMISSIONER DAFOE: There is an assumption abroad that there is a vast amount of accumulated wealth in Canada which can be drawn on for public purposes. There is a reference to it somewhere in this brief. It says that in Great Britain 55 per cent of the national income is drawn from accumulated wealth, and about 20 per cent in Canada. Then, later on there is a suggestion of a capital levy. Have you figures which would suggest that there is that accumulated wealth in Canada, and it has reached such a figure that it would permit these levies to be made without a serious reduction of the capital necessary for the

productive processes of Canada. Are we in a position to stand drastic action of that kind?

MR. MARSH: It seems, sir, it is a matter of degree. It is not a question of jacking up the rates to the British level necessarily. We are suggesting for the moment, at any rate, there is a margin which has not yet been utilized. There is the difference, to that extent, I think. We are suggesting there is a large difference between the dominion taxes and the British taxes, and not that we should immediately go to the extent that they do in Britain.

COMMISSIONER DAFOE: Of course, you can push the theory of an unlimited increase of taxation against wealth to a dangerous point. I suppose everybody will admit that. Your position is that it can be pushed considerably farther, under existing conditions.

COMMISSIONER DAFOE: There is another question I should like to put on the record. When you ask for these enlarged powers for the dominion and indicate that they would be employed for what you called "extensive regulation of business", and which some people call "regimentation" you are assuming that the proposition could be sold to the people of Canada by a democratic method.

MR. MARSH: Yes, I must agree to that.

COMMISSIONER DAFOE: It is an obvious question, but I thought I should put it on the record.

MR. MARSH: We are only too glad to have it put on the record.

MR. SCOTT: May I say one word with regard to that? We have not in this brief attempted to say what kind of economic control should be established. We say that there is a clear trend in that direction in Canada, and that

the present constitution does not permit of that kind of national control in any certain way. If we assume the trend is to be continued then a constitutional adjustment must be made, and it will have to be a national adjustment. We are confining ourselves, at this stage, practically to that point. We are moving in that direction. The constitution is out of line with that trend, and it should be brought into line with it, because it relates to the whole problem of social security, unemployment, and so forth, for which taxation is so necessary. In other words, economic control of taxation is directly connected with it.

COMMISSIONER DAFOE: It is a possibility, and a fact that plenty of people might associate themselves with you in desiring this enlargement of dominion power.

MR. SCOTT: Quite so.

COMMISSIONER ANGUS: You have very definitely taken the position that economic control can be efficient and beneficial.

MR. SCOTT: Certainly.

BY MR. STEWART:

Q. Mr. Scott, would you make a statement as to the aims, personnel and geographical extent of your league.

A. We were organized, sir, in 1932 as a research organization. At the outset we had two branches only, Montreal and Toronto. But later branches were formed in Vancouver, Winnipeg and one or two of the smaller towns in the west and some of the smaller towns in Ontario. We have never had a wide membership. We have confined ourselves to economic research and education alone aiming in the direction of what one might generally called a technically planned economy.

Q. What is the membership of your league? A. I should say at the present time, probably not more than 600

in the various branches. The branch in Toronto has a membership of close to 200, Montreal 100 to 150, and in the other branches a somewhat smaller membership. The membership is inclined to vary. Branches will be formed, exist for a year or two and then disappear. But there is a nucleus in the league which continues to carry out research in national problems as they come up from time to time.

Q. It has no affiliations, has it? A. It has no political affiliations, whatever, although there is considerable overlapping in its personnel with certain other political groups.

Q. What political groups? A. It has no affiliation, but we have members in our league who are members of other associations who approach problems as we do. We talk over national matters. For instance, members of other political groups, well known groups, are members of our association, but we are not affiliated with any.

Q. Now, turning from that to the points in your brief. In your commencement you quote from a great many of the so-called Fathers of Confederation with a view to showing the importance placed by them on the residual power. That is so, is it not? A. On the national power, which includes the residual power, yes.

Q. Without running over this list I may say that it struck me perhaps you have over-emphasized the purport of these quotations, especially those of Cartier, Brown, McGee and Langevin? A. In what way, sir?

Q. The residual powers emphasized in these. A. We think these quotations speak for themselves.

Q. Quite. And the quotation from the Hon. Mr. Olivier and the Hon. Mr. Dorian. These are speeches by two who were opposing the confederation scheme. A. Yes.

Q. And it may be expected there would be some dialectic or aggrivation? A. Yes.

Q. Now, as to the situation with regard to the interpretation of the B.N.A. Act, is it your position that in interpreting the B.N.A. Act., the courts including the Privy Council, should have read the speeches of the Fathers of Confederation and the Quebec and Charlottetown Resolutions? A. Speaking purely personally, sir, I think not only should they have read them, but I think it is demonstrable that they have read them.

Q. For the purpose of interpreting them, I mean.

A. It is very difficult to know whether a court reads something for the purpose of interpreting them or otherwise.

Q. Do you think they should have interpreted the B.N.A. Act in the light of the Quebec Resolutions and the speeches of the Fathers of Confederation. A. Yes, I do. I think that is evidence as to the intention. In other words, I think the rule adopted by the French courts of admitting preliminary discussions, travaux préparatoires, is sound, and it is used in Quebec. We do not hesitate to go back to the reports of the commissioners to see what they intended. I think that rule is a superior rule to the English rule which excludes such evidence.

Q. It would be a very revolutionary method of interpretation in the English court. A. I think it is difficult to say that now, seeing we have had the example of the aeronautics case. Lord Sankey incorporated into his judgment a portion of a speech made by Lord Carnarvon when he introduced the B.N.A. Act into the House.

Q. That was considered very revolutionary. A. He did not put quotation marks around the passage, so the revolution was not so apparent.

Q. As a matter of fact if the privy council and the Supreme Court of Canada were to have adopted this method of interpretation it would, in effect, have been converting the courts into legislative bodies would it not? A. They have adopted that method, sir.

Q. You might please just answer the question. A. No, I do not think properly construed it would. It would mean their interpretation would be in line with the spirit which formed the original act, and that interpretation is still an interpretation, but it is a better kind of interpretation than would be the purely legalistic, statutory and a verbal interpretation to which otherwise they are compelled.

Q. Do you think it is preferable to have our legislative bodies do that rather than the courts? A. As far as possible I think yes.

Q. Now, turning more specifically to the league's views to the efficacy of the peace, order and good government clause in the B.N.A. ACT. Is not the view you have put forward based on the assumption that the peace, order and government clause should be construed as if it were also covered by the non obstante clause? A. That is my personal view, sir. I am not speaking for the brief now on that point. I think there again you cannot understand the position of the residuary clause unless you see its original position in the Quebec Resolutions. May I point out here and call your attention to the footnote on page 21, where we say the Quebec Resolutions spoke about "peace, welfare and good government", not "peace, order and good government". The word "order" was the substitution made in London for the Canadian word "welfare". The idea in the minds of the Fathers of Confederation was that all things affecting the national welfare were appropriated to the residuary powers.

Q. The courts have to construe the statute before them?

A. Quite; but there is the emphasis.

Q. And there is also the very great emphasis in the non obstante clause, is there not. A. Well, this involves a rather technical reply, if I may give it.

Q. Yes. A. If you look at the Quebec resolutions you will see the dominion residuary clause was repeated twice, and the Dominion powers is a preamble, as it is today. In section 91 the powers of parliament are all enumerated, and sub section 29 of section 91 deals with the exceptions. If they did not get into the B.N.A. Act ^{in the form} / then they would have followed the concluding paragraph of section 91, and the courts would then not have made what I consider a completely unjustifiable distinction between the dominion powers in 91 which are specified or enumerated and those powers in 91 which are not specified in the sense that they have a number opposite them, but which come in the residuary clause alone. I do not think that distinction is justifiable.

Q. However, in interpreting the B.N.A. Act as it stands it is impossible to apply the non obstante to the twenty-nine enumerated subjects is it not? A. I do not think it would. To interpret the number enumerated in the section the preamble would have to be included.

Q. If you view is correct the non obstante clause is unnecessary. Is not that so? A. It would still be necessary because the non obstante clause has the effect of making dominion legislation under the head of 91 ^{valid} / even though it conflicts with something under section 92; therefore it would still have been necessary to have it.

Q. But not in connection with the twenty-nine enumerated heads. A. It would be necessary in connection with the whole of 91, yes.

Q. Perhaps a good deal of the privy councils difficulty arose over that one thing. A. I think so.

Q. That it applies in express terms only to the twenty-nine enumerated heads. A. I think that is the difficulty; although Lord Haldane once made a remark that it applied also to the residuary powers, but inadvertently.

Q. Do you not think it is his legitimate view, Mr. Scott, that the item of property and civil rights was conceived at the time as conferring a very wide jurisdiction on the provinces? A. I think, sir, it was conceived as conferring the full jurisdiction over property and civil rights in their legal aspects. The Quebec Resolutions, when they spoke of property and civil rights, added words not found in the B.N.A. Act. I forget the precise words, but I think they are "excepting these portions thereof" etc. In other words, it was clear at the time that it was divided, part only given to the provinces and the other part was given to the dominion, and the line of demarcation is the same line of demarcation that runs through the whole B.N.A. Act., between matters in their local aspect and matters in their national aspect.

Q. Don't you think that section 94 was inserted with the sole purpose of bringing about the wider national power with the consent of the provinces from time to time, cutting down the provincial jurisdiction in property and civil rights? A. Yes, I do.

Q. And that therefore it was regarded as a very wide and important jurisdiction at that time to give to the provinces. A. I do not think it is the only explanation. Another explanation is, in spite of the fact that property and civil rights was a local matter largely, they hoped that the local matters would bring a great deal of uniformity in Canada.

Q. Your view is once the provinces have proceeded along the lines set out in section 94 provincial jurisdiction lapses or ceases? A. Yes.

Q. In the five objects that you list as being within the view of the Fathers of Confederation you include uniformity and property and civil rights as one? A. Yes.

Q. Don't you think that is an over-emphasis of that point when you include that as one of the five objects of Confederation? A. I doubt it. I do not think it is an over-emphasis, because the whole of the Confederation agreement was directed towards the establishing of unity in Canada where previously there had been diversity, severance. That was one of the aims they hoped to achieve. There is no doubt Sir John Macdonald, who conceived this idea, was distinctly proud of it, and I quote only a portion of what he said about it here, and the fact that he speaks about one of the first acts of Confederation being to use this section, and the fact that in 1869 there was actually a federal move to establish a Commission to proceed with the work, is an indication.

Q. Apparently from then on it was lost sight of until taken up again by the Canadian Bar Association Committee on Uniformity. A. Yes, in effect that is what they were doing.

Q. Now, a little later in your brief you refer to Mr. Cahan's description of the content of the expression "property and civil rights" and you go on and say that you feel it had a far narrower meaning in 1867 than it has today? A. Yes. That is his conclusion, sir.

Q. I understood you to say yesterday that you took his conclusion. A. Yes.

Q. Or his reasoning? A. Yes.

Q. And that in 1867 it was one of the five objects they had in mind to bring about a unification in the field?

A. Yes.

Q. Dont you think there is a little inconsistency in the two views? A. No. The first part of the statement is that in 1867 property and civil rights had a much narrower meaning than it now possesses under recent judicial interpretation. I do not think anyone will question that in general.

Q. I think it can be questioned in a great many lines in Canada. A. May I say, sir, that a very considerable body now support that opinion. My second remark is, it was definitely the object of the Fathers of Confederation to see that uniformity was established even over this field which was narrower then than it now is.

Q. That was one of the five principal objects of Confederation? A. Yes.

Q. I am trying to find your reference to the privy council. A. It is on page 12, sir.

Q. Page 13 is the one I am interested in. You state on page 13: "

"The conflict between Canadian intentions and privy council interpretations is likely to continue so long as the appeal continues."

Do I understand from that, that it is the view of your league that the privy council is deliberately thwarting Canadian aspirations? A. I think the word "deliberately" is too strong from our point of view. I think we would consider it impossible for a remote court to give to a statute of this character the kind of interpretation that the people of this country would give to it.

Q. You then suggest -- it is rather implicit in it, if not express -- that if legal amendments were made to clarify the situation the privy council might still use its ingenuity to thwart those amendments. A. I would

phrase it somewhat differently, sir. I think if we did make an amendment today to the constitution and left it to a remote court to interpret the extent and effect of this amendment we are likely to be in danger of having the same experience over again as we have had in the past.

Q. You are not suggesting, however, that there is any deliberate intent. It is merely an assumed opinion that you are relying on for that statement. A. Yes. I must say that this article of the late Lord Haldane's is almost an admission on his part there must be a deliberate function of statesmanship in a member of the judicial committee.

Q. Is not that true of all courts? A. I think, s.r., it is a question of terminology. I believe it is necessary for a court to bring more to the interpretation of a statute than can ever be found in the statute in many instances.

Q. Don't you think, it is rather rash to take an obituary too seriously about any judge or any lawyer?

A. I could have -- although I did not do it --- given references of three other articles of the late Lord Haldane of a later period, where he makes exactly the same contention. Speaking from memory I think you will find the article in the Cambridge Law Journal of 1922 where he repeats the assertion, and that was after he had become a member of the Judicial Committee. There is a reference to it in the Canadian Bar Review of 1930.

(Page 2860 follows)

(Mr. Scott continuing.)

If you read Lord Haldane's autobiography you will find somewhere in that volume a reference to the same matter; and in another book of his on the Empire -- I am afraid I have forgotten the title -- he makes the statement again. In other words, the statement he made as an obituary in 1899, before he became a member of the judicial committee, was one which he repeated on several occasions after he had himself sat on the judicial committee for a considerable number of years. I suggest therefore that these ought not to be considered merely as praises in an obituary notice.

MR. STEWART: As a matter of fact there was only one case that had an opposite tendency up to the time of Lord Watson's series of decisions.

MR. SCOTT: That certainly was the principal one.

MR. STEWART: It was the principal one showing any tendency towards an enlargement of the peace, order and good government power of the dominion.

MR. SCOTT: Yes.

THE CHAIRMAN: Are you speaking there of the judicial committee or of the Supreme Court, or both?

MR. STEWART: I meant the question with reference to both.

MR. SCOTT: My point is that had the Supreme Court been the final court of appeal we should have had a different emphasis in the interpretation.

THE CHAIRMAN: What struck me was that in the passage which you quoted from Lord Haldane he refers to more than one decision; in that statement he suggests almost a series of decisions. That was the occasion of my asking you yesterday whether you could refer us to the decisions to which Lord Haldane makes reference.

I wanted to know whether you had found any. I have not looked up the earlier Supreme Court decisions to see whether this is an accurate statement of the effect of the judgments of the Supreme Court, and I was wondering if you could throw any light on the matter. As you will see, Lord Haldane uses the plural. He says: "He completely altered the tendency of the decisions of the Supreme Court."

MR. SCOTT: Well, sir, it is not that he the decisions so much as that he altered the tendency.

THE CHAIRMAN: Quite so.

MR. SCOTT: And the tendency of the Supreme Court decisions in the early days was to give the residuary clause an operative effect even when it interfered with property and civil rights in their local aspects, and also to give the dominion trade and commerce clause a very considerable effect; and these two tendencies are, I think, the tendencies to which he is referring. It may be that he put it rather too strong. I am sure in my own mind, however, that it is substantially correct to say that these tendencies were overcome by the decisions of the Privy Council.

THE CHAIRMAN: I was wondering whether Lord Haldane, as he then was, had not stated the position a little too strongly. I do not know because I have not checked up the earlier decisions to see.

MR. SCOTT: I should think that perhaps it is a little strong as he puts it when he says, "completely altered the tendency of the decision." But there is no doubt that, as regards the general interpretation of the residuary clause, the Privy Council overruled the interpretation put upon it by the Supreme Court of Canada.

And the best, certainly the most striking example is the contrast between the Supreme Court decision on the liquor prohibition appeal, which will be found in 1894 Supreme Court Reports, and the decision of Lord Watson in the Privy Council in 1896 Appeal Cases. That brought the issue to a head. The whole approach, and the tendency of the approach was different as between the two courts. I think I could cite the unreported decision. There was a liquor case in between Russell v. the Queen and the liquor prohibition appeal.

THE CHAIRMAN: The MacCarthy Act.

MR. SCOTT: Yes, that was fully reported.

THE CHAIRMAN: I hope you will excuse me, Mr. Stewart, for interrupting.

MR. STEWART: That is quite all right, my Lord. Before leaving the Privy Council situation, Mr. Scott, do you think it would be at all useful to explore the possibility of changing the personnel of that court as a court of final appeal for imperial purposes?

MR. SCOTT: I think -- speaking offhand -- that there should be some more established procedure in the selection of the personnel. It should not happen that a court, a judicial committee, can decide, let us say, the radio matter in 1932, involving the interpretation of dominion treaty making powers, and five years later when the judicial committee has to consider the same question there is not a single member on that committee in 1937 who sat on the committee in 1932. It should not be possible for the final court of appeal in Canada to change its personnel completely in five years. There is not sufficient continuity of approach, and in my view that is an unsatisfactory state of affairs.

MR. STEWART: There should be more regularity about the personnel ?

MR. SCOTT: More regularity about the personnel, certainly.

MR. STEWART: And possibly in the representation from the members of the commonwealth.

MR. SCOTT: There you are leading me farther than I should care to go. Personally I would favour abolition of the appeal.

MR. STEWART: And not explore the possibility of changing the personnel?

MR. SCOTT: In the alternative, if the appeal is not to be abolished, then certainly I would favour exploring the possibility of changing the personnel.

MR. STEWART: You feel that the administration of justice in Canada would develop more satisfactorily if the appeal were abolished?

MR. SCOTT: Yes, I do.

MR. STEWART: Will you turn to page 13 for a moment? In the fourth line of the second paragraph you use these words :

" shorn of much of its power to regulate trade and commerce, shorn of a great part of its power to implement treaties, and almost totally incapable of providing for the masses of the Canadian population that protection against the national evils of unemployment fluctuating wage and price levels, and social insecurity which is being increasingly demanded to-day."

What do you mean by that?

MR. SCOTT: I mean that in regard to trade and

commerce the original intention of the Fathers of Confederation, and the earlier interpretation of the Supreme Court of Canada, would have given wider powers to the dominion to enact certain essential measures looking to economic control. I quote a passage later from Mr. Paterson's article to show that on no single occasion has a single dominion statute been upheld; in other words that power has become almost ineffective. In 1912, in the Montreal Street Railway case, the Privy Council referred to the trade and commerce clause almost in the same terms as the residuary clause, namely, that the non obstante clause did not apply. They suggested that, and it undoubtedly restricted this power on the part of the dominion.

MR. STEWART: As regards international and inter-provincial trade?

MR. SCOTT: Yes, and these terms were left so ill defined as not to be useful to the dominion.

MR. STEWART: As regards treaty making powers?

MR. SCOTT: The provincial legislatures have now been held to have jurisdiction over the implementing of treaties whose contents relate to some matter within Section 92, an interpretation which is clearly inconsistent with the way in which the Fathers of Confederations talked about the treaty making power.

MR. STEWART: You are not suggesting however that the content of Section 132 has been reduced by recent decisions?

MR. SCOTT: It is a little difficult to discover the full implications of the recent decisions in regard to the Ilo conventions. It would appear that Section 132 is operative; but the definition of "Empire treaty"

is so narrowed as to make the section useless to justify dominion legislation on a number of things which are treaties.

MR. STEWART: You do not think there is any doubt as to what the Fathers of Confederation had in mind by the words "Empire treaties."

MR. SCOTT: No. As a matter of fact the Fathers of Confederation did not speak of Empire treaties. The Quebec Resolutions -- and here I am covering ground which the League of Nations Society will cover -- spoke about treaties affecting Canada between Great Britain and foreign countries, because they were the only conceivable type of treaties.

THE CHAIRMAN: I might point out, Mr. Stewart, that this question is very fully developed in the brief that we shall hear next.

MR. STEWART: I realize that, my Lord; I merely wanted Mr. Scott's view, that is all. There are one or two expressions which appear on page 15 of your brief, Mr. Scott, which I should like you to explain if you will. You refer to certain influences at work. You say:

" When the crash came in 1929 and the false sense of security was destroyed, the divisive influences in the dominion came promptly to the fore, and have until now frustrated the organization even of efficient unemployment relief services."

You will find that at the bottom of page 15. Will you specify those influences and tell us what they are?

MR. SCOTT: My reply is simply that an efficient unemployment relief service for Canada must be a national

relief service.

MR. STEWART: But you refer to certain influences in the dominion which you say came promptly to the fore and have until now frustrated the organization even of efficient unemployment relief services. You must have some specific influences in mind. Will you describe them?

MR. MARSH: Perhaps I might be allowed to answer that question. If the federal government was unwilling to lay down specific regulations in the handling of funds disbursed as relief moneys, it can be argued that some of these regulations might have been very effective and might have prevented some of the abuses in standards of relief.

MR. STEWART: You think that that is a fair description of the influences in the dominion which you say came promptly to the fore and frustrated the efforts of the dominion.

MR. SCOTT: The reference there is to the cumulative effect of the sectional influences in Canada which were in a sense accentuated and disclosed by the disappearance of the prosperity of 1929 and which, because of their existence, made uniform and efficient administration of relief impossible.

MR. STEWART: You are not referring to any specific sinister influences?

MR. SCOTT: Oh no; I am referring to the rise of sectional feeling, the provincial rights sentiment and so on.

MR. STEWART: Turning for a moment to page 16, I might quote the following passage:

" It means there have grown up in Canada

"new centres of power and authority, not part of the formal constitutional structure yet capable of shaping the destinies of the country in a manner that parallels, if it does not indeed exceed the power of government."

Will you be specific on that point?

MR. SCOTT: This is part of our argument, showing the development of economic monopoly. In the days when Canada was much more a laissez faire economy than it is to-day, there could not be in the hands of small groups any control of finance or production, any considerable control in the shaping of the destinies of the country, because of the operation of the ordinary economic laws, which in a more or less laissez faire economy prevent any control being exercised in that way. When, if I might borrow the words of the late Prime Minister, the free market began to disappear in Canada over certain sections of the economy, it followed that there were people in dominant positions of control in finance and industry whose decisions inevitably began to shape the direction in which the economy would develop, in a way that had never been known before; and those centres of powers to which we have referred are to-day potent influences shaping the national destiny. And they are outside government. We have no political democratic control over them save in a very indirect fashion, and amongst that group there is no consumer, farmer or labour representation.

MR. STEWART: You go on to say that these interests challenge government.

MR. SCOTT: Do we say that?

MR. STEWART: Let me find the exact words. You

statement:

" Monopoly means, in addition to great power that challenges government, a maldistribution of wealth. "

Can you give instances of that?

MR. SCOTT: The meaning of that sentence is that monopoly involves the existence of powers with an authority comparable to that of government and in certain instances conflicting with it.

MR. STEWART: Conflicting with government?

MR. SCOTT: Yes.

MR. STEWART: Is that what you mean?

MR. SCOTT: Yes.

MR. STEWART: Can you give us any specific instances to illustrate that statement?

MR. SCOTT: Instances of conflict between the representations of these interest and that of government?

MR. STEWART: Yes.

MR. SCOTT: Well, for instance --

MR. STEWART: I mean, instances where they challenge government, where they set their own power up against the government. Can you give us any instances to show where that has been done?

MR. SCOTT: That is not the meaning of that sentence. It means the existence of another power in the country, in certain respects of equal authority comparable to that of the government. Certainly, so far as provincial governments are concerned, there is an equal authority.

MR. STEWART: Surely the sentence can mean only that these interests set themselves up and defy government. That is what the sentence means.

MR. SCOTT: No, that would be reading far too much into it. It means that there exists power whose decisions, like that of government, shape the destinies of the country, and which frequently conflict with government.

MR. STEWART: "In addition to great power that challenges government"; those are your words.

MR. SCOTT: It depends on the way in which you interpret the word "challenges." Government is challenged to do something about it; frequently the power in question challenges government in the sense that the whole weight of that power may be thrown in the opposite scale to the governmental influence.

MR. STEWART: But only in ordinary democratic ways.

MR. SCOTT: Oh certainly; I am not suggesting anything else.

MR. STEWART: I should like to refer you now to page 17 -- or rather we might turn to the very bottom of page 16. You make this statement:

" In the year 1937, when public relief was still being given to close on 1,000,000 Canadians and the real value of relief payments had been reduced by rising prices, when the worst drought in the history of Canada had struck the prairie provinces, and wage rates in many industries were still very low, Canadian corporations were able to pay the biggest dividends in the history of the dominion."

I understand that you refer, for your authority, to the Financial Post of December 11, 1937. Is that right?

MR. SCOTT: Yes.

MR. STEWART: Did you make any independent

investigation of these figures?

MR. SCOTT: I did not personally; the figures were supplied to me by an economist who is a member of our League for Social Reconstruction and on whose authority I am relying.

MR. STEWART: The general impression to be gathered from that statement is that the profits of *business* were very much in excess, in 1937, of what they were in the previous period, in 1929 or 1930.

MR. SCOTT: To the extent that we indicate, *yes*.

MR. STEWART: Do you think that is correct?

MR. SCOTT: I do believe that in 1937 they were in excess of what they were in 1929.

MR. STEWART: Do you not think that it is due almost entirely to the earnings of the gold mining companies? Perhaps a great deal more than that increase is due to the distribution of profits by the gold mining companies. That alone would more than account for the difference.

MR. MARSH: That really does not change the situation, in our view. It is a question of available income and the distribution of that income. It is not exactly the contention that the profits of the same corporations were greater.

MR. STEWART: Or the same lines of business.

MR. SCOTT: We are speaking of the maldistribution of wealth as a social problem. If greater dividends are paid and greater bond interest, it means that a greater total proportion of the national income is going into the pockets of those who need it less than those other persons who are on relief, suffering from the effects of drought or low wages.

MR. STEWART: You are quite familiar with the fact however, that, as between 1930 and 1937 practically every line of corporate endeavour has shown a very marked drop in interest and dividends. Isn't that so?

Banking, trust companies, loan companies, the pulp and paper industry --

MR. SCOTT: Is that true of the pulp and paper industry? I believe they come close to, if they do not exceed, the previous figures.

MR. STEWART: I am informed -- I do not know whether it is true or not -- that not a single dividend was paid in the pulp and paper industry in Canada in the year 1937.

MR. MARSH: Again, it is not a question of individual industries. It is a question of dividend payments as such, the proportion of the national income that is paid in the form of dividends.

MR. STEWART: But you tie up this increase with the working conditions, the wage rates in these industries, intimating, by coupling up these conditions with these very industries, that the same industries that have lowered wage rates are paying higher dividends. That is the only obvious deduction that one can draw from the statement which I have read.

MR. SCOTT: Not at all. The context has reference to the maldistribution of wealth, which is a general social phenomenon.

MR. STEWART: To me, and to yourself as well, I believe, the fair inference to be drawn from the context is that the industries that were paying higher dividends in 1937 were paying lower wages. That is the context of that sentence. I think that a fair reading of the sentence would suggest that. At any rate, you say

it is not what you mean.

MR. SCOTT: Well, it may be true in certain instances; we do not say that it is or is not.

We simply say that in regard to the maldistribution of wealth, the fact that there is maldistribution is shown by the contrast between the profits on uninvested capital and wage rates, and relief rates to large sections of the community.

MR. STEWART: Do you think those can be correlated in gross as you suggest?

MR. SCOTT: It is a problem for governments to deal with.

MR. STEWART: You do not think it should be done from one industry to another?

MR. MARSH: It might be, in part, but that is not the main approach.

MR. SCOTT: Our point is that this presents to Canadian governments a challenge which they should meet, because the purpose of Confederation was to create a democracy in Canada, and maldistribution is anti-democratic and frustrates the purposes of Confederation. That is our argument.

MR. STEWART: But that is not the statement as I read it.

THE CHAIRMAN: If, as Mr. Stewart has suggested, this increase springs wholly from the gold mining industry, which was relatively non-existent in 1929 or 1930, does not the statement which you make in this paragraph convey a wrong impression? I quite understand your argument as you have just stated it. But when you set out specifically unemployment, lower wages and similar conditions and then put against those factors higher dividends, is not the irresistible inference to the

ordinary reader this -- that the same concerns that have let out employees and have reduced wages are paying higher dividends to their shareholders than they did in 1929 and 1930? At any rate, that would be my reading of the sentence. It may be that you did not intend to convey that meaning.

MR. SCOTT: I confess that that idea never crossed my mind in reading my own draft on this point. I was concerned with the national problem of maldistribution of wealth as evidenced by dividend payments, which is in our opinion a sort of byproduct of the tendency to monopoly. They are both related, and both present a national condition which in our opinion the governments of Canada must do something to remedy. I was not thinking of specific industries as having paid lower wages as a means of securing increased dividends. Wages may be the same in some cases, in some cases they may be better; but obviously in some cases they are still pretty low.

THE CHAIRMAN: If you are to make any fair comparison, must you not break it down and look at the individual industries? You would probably find that many of them, as Mr. Stewart has pointed out, have not been in the fortunate position that has been suggested. Many of them are making much lower profits -- they were making much lower profits in 1936 and 1937 -- than in the earlier period.

MR. SCOTT: I have no doubt that is true, sir.

MR. STEWART: And to the industries that I have mentioned, we could add transportation and the grain handling companies as having passed out of the picture so far as dividends in the past seven years are concerned. Is not that true?

MR. SCOTT: That may be so; but the same people

who formerly carried on these businesses are now engaged in other enterprises making dividends, and from the national point of view we say that the money is going into the same type of pockets.

MR. STEWART: We were told on Monday that in the opinion of the Canadian Manufacturers' Association, the average net annual profit of all manufacturing corporations in the United States for the period from 1917 to 1934 was 3.71 per cent of the gross income, and that, further, for the ten-year period from 1925 to 1934, three and one-fifth per cent was the rate of return of earnings on the shareholders' equity. They further expressed the opinion that the statistics for Canada would not show higher rates in this country than in the United States. What do you say as to that?

MR. MARSH: I would say this much, that very little can be presumed from any statement of profit percentages, because it would need just as much analysis as any other figure. It is impossible to say whether that means that a larger share has gone to single groups or not.

MR. STEWART: This is the statement for the manufacturing industry as a whole.

MR. MARSH: I am not familiar with the exact figures. Profit percentage means nothing until you know what capitalization it is based upon, and that raises a large question.

MR. STEWART: Whether it is value or cost?

MR. MARSH: Yes.

MR. STEWART: But you would not consider three and one-fifth per cent an attractive rate?

MR. MARSH: I would be neutral to such a question; I cannot say whether it is good or bad.

MR. STEWART: On page 17 you make this statement:

" The dominion is well along the road that leads to industrial feudalism, to class conflicts and to undemocratic social standards."

I want to put this question to you, Mr. Scott: Do you think that there was ever a time in Canadian history when labour was freer and more powerful and more capable of looking after its own interests than it is to-day?

MR. SCOTT: It is difficult to answer a question put in that form, because, industrial conditions having changed so greatly, the word labour to-day means something different from what it meant, say, forty years ago. Forty years ago, before industrial monopoly had developed, the relations between employer and employee were much closer. The employee was not dealing with a large impersonal corporation as he is to-day. There were all sorts of factors in that kind of industrial society which do not exist in certain parts of our society to-day. I would say that the tendency in Canada, which has gone along with the growth of monopoly has been a tendency to place the industrial labourer in a progressively weaker position vis a vis his employer, and it is precisely for that reason that governments have come to the aid of the labouring class, to redress the balance which has been lost on the purely economic side. That is the tendency we are referring to here. Because of the increase in monopoly, the individual worker is faced to face with a vast industrial organization to which the old idea of free contract in the hire of labour is inapplicable.

MR. STEWART: On the other hand, is it not a fact that in the larger industries the labourer is much better organized than in the smaller industries?

MR. SCOTT: That inevitably comes about in time.

After you have got industrial control on a large scale, the immediate effect is to place the worker in an inferior position, and then there will spring up an organization of workers to meet that difficulty. But in large sections of greater industries in Canada to-day there is no organized labour. Take mining -- I mean, the new industry. There is little unionization to protect the worker against the very large corporations with which he has to deal.

MR. STEWART: You are referring to metal mining?

MR. SCOTT: Yes, not coal mining; I am referring to the new mining industry.

MR. STEWART: That is relatively a new industry as big business.

MR. SCOTT: Yes; we do not believe, however, that unionization should wait until an industry is old before it has a place.

MR. STEWART: Well, I should say not. Perhaps you will answer my question now. In your opinion, was there ever a time when labour was freer and more powerful and more capable of looking after itself than it is to-day in Canada?

MR. SCOTT: I believe that when Canada was a pioneer society, what we would class as labour, meaning the well off pioneers, were more freely individualistic and could look after themselves much better than in our present community.

MR. STEWART: I am going back only to 1867; I was not thinking of going back to the 16th or 17th century.

MR. SCOTT: But the difficulty is this. In the modern industrial city there is a large population, many of whom have come into the country -- Canada, for instance -- fairly recently, and their position vis a vis their

employers is in my opinion frequently worse than that which the ordinary Canadian workman occupied, vis a vis his smaller employer, seventy years ago.

MR. STEWART: That is as far as you go in giving a specific answer to my question. Now I would refer you to page 18, where you speak of the increasing maldistribution of income and property. You say:

" The increasing maldistribution of income and property, which is making the accident of birth more and more important in the life of the individual Canadian "---

And so on. Do you really believe that the accident of birth is as important to-day as it was in 1867? Do you really think so, Mr. Scott?

MR. SCOTT: I think it is more important.

MR. STEWART: You do?

MR. SCOTT: I believe there was greater social equality at that time amongst most Canadians than to-day. I believe the inequalities of wealth are becoming more and more apparent.

MR. SCOTT: Do you think that the opportunities open to young men are less evenly distributed to-day than they were in 1867?

MR. MARSH: I think that is probably a fair statement-- that the individual born into the society of 1867 had an easier chance to carve a career for himself than the Canadian to-day born in the slum areas of one of the larger industrial cities.

MR. STEWART: Do you think that applies to education?

MR. MARSH: It certainly applies to university education; for instance training for the law, shall we say?

MR. STEWART: You believe that; that is your view?

MR. MARSH: Yes.

MR. STEWART: What are the statistics in regard to attendance at the universities?

MR. MARSH: It depends upon what you mean; that is a large question. It depends on what you are trying to show.

MR. STEWART: Has the tendency in attendance at colleges been on the increase since 1867?

MR. MARSH: Undoubtedly, but that is not the point.

MR. STEWART: In what proportions?

MR. MARSH: I do not know offhand, but that is not the point. Statistics in regard to attendance at universities are not sufficient in themselves to tell you any social trend unless you know the statistics, which do not exist, in regard to people who might profitably go to university and do not.

MR. STEWART: You have no statistics on that point at all, Mr. Marsh?

MR. MARSH: No, it is a general statement.

MR. STEWART: Applying to what part of Canada that comes within your personal observation?

MR. MARSH: I would say the whole of Canada.

MR. STEWART: You have sufficient knowledge of the whole of Canada to make that statement with reference to all parts ?

MR. MARSH: It depends what knowledge means. If it means practical experience, having talked to every Canadian, the answer is no; but if you mean, so far as any educated man can take account of economic and social conditions, the answer is yes.

MR. STEWART: That is all you have to depend on

for your answer, yes, your general knowledge of social and economic conditions ?

MR. MARSH: I am bound to say, in answer to that, that there are a great many matters of personal experience, but I would not base the answer on those alone. Speaking purely personally and off the record, and not for the League, I may say that there are a great many pieces of research which are now being made that do suggest that inequality of income has its effect in access to education and in employment opportunities.

MR. STEWART: I turn now to page 19. You speak there of "a basic minimum of social security for every citizen." Can you define that in services?

MR. MARSH: There is no absolute definition, but it is possible to say this much, I think, that in all eastern countries or western countries -- I am not quite sure which adjective to use -- industrialization has gone on to a large extent and government has developed social services and certain types of social legislation have become accepted. I suppose one of the best examples is old age pensions. Nearly every country has some type of old age pension legislation; it is a matter of degree. In 1867 it was not regarded as essential that the state should do something about the aged. I am bound to say, however, that there is no final definition, though there is a well understood concept among economists, statesmen, and politicians.

MR. STEWART: Is the security that you postulate dependent upon the citizens' willingness to work and to improve his lot by being ambitious?

MR. MARSH: That must depend on the type of legislation. It is hard to answer that question in a general way, but it is perfectly fair to say, yes. The only thing

is that there are some types of social legislation to which that does not apply. You do not insist, before a man gets an old age pension, that he must have shown ambition. If you take sickness insurance, the qualification is whether you are sick or not.

MR. STEWART: Turning to page 22, I find this statement:

" The federal government has been altogether too willing in the past to shirk its responsibilities of leadership and to refrain from making use even of the powers which it undoubtedly possesses. The slightest hint of provincial objection has often been enough to prevent any action at all."

Will you give some specific instances of that?

MR. MARCH: I would prefer to say this. We are suggesting there that the use of dominion or provincial power is not entirely a matter of constitutional law. It is in part a question of the cabinet of the day, and it is quite evident that some cabinets will go farther than others. The reference is rather to that.

MR. SCOTT: A specific answer would be with reference to unemployment insurance. Unemployment insurance was adopted as a principle in the program of the Liberal party in 1919. There was no reason why we should have waited until 1937 to discover that the dominion parliament had no power to enact legislation in that regard. Our suggestion is that we should have discovered these things earlier and should not have waited until the country was in the condition in which it was as a result of the depression.

MR. STEWART: Was there a hint of provincial

objection to that?

MR. SCOTT: Speaking from memory, I think that that there has always been some doubt as to the constitutionality of such legislation. That was evidenced in the debates when Mr. Bennett actually introduced the bill, but the doubt antedated that..

MR. STEWART: I would take it, Mr. Scott, that those two sentences to which I have referred are a serious indictment of the federal governments of Canada, of shirking responsibility, and I should think you would have more than one specific clear-cut instance of it before making that statement. Have you any such clear-cut cases which you could cite?

MR. SCOTT: In the whole field of social legislation, in our opinion, there should have been earlier action by dominion governments, and that action should have been initiated by the dominion even where there was some doubt as to the constitutional position, in order that that constitutional question might have been clarified. We feel that the federal government has not done enough in that regard. We point out in our brief that immediately after the war the federal government did initiate certain useful moves. We had the federal government sending delegates to Washington and signing the 8-hour day convention there. We cite the introduction of technical education, unemployment relief services and old age pensions, and we point out that as an historical fact that movement towards reconstruction -- the word was much in use immediately after the war -- stopped very soon. In our opinion it should have been continued. In not continuing that movement the dominion government shirked its responsibility.

MR. STEWART: Have you any other examples?

Will you turn to page 27? Probably Mr. Marsh would prefer to answer this question. You make this statement:

" Not twenty per cent of its total amount in the dominion provincial field can be described as being levied on those best able to pay."

There you are referring to Canadian taxation. What is your authority for that statement?

MR. MARSH: That has reference to the sources from which income and inheritance taxes are obtained.

MR. STEWART: Can you specify?

MR. SCOTT: Any analysis of of the tax receipts of the dominion and provincial governments listed in the Canada Year Book will show at a moment's notice that these approximate percentages are correct -- that only 20 per cent of the total dominion and provincial tax comes from inheritance and income taxes. In our opinion these taxes are imposed upon the people best able to pay, and it follows therefore that the other 80 per cent comes from regressive taxation, which falls upon the entire country and upon those least able to pay.

MR. STEWART: You have no statistics showing who actually do pay the taxes? Do not those well able to pay contribute their share of the sales tax and other taxes as well?

MR. SCOTT: We speak of those best able to pay.

MR. MARSH: We are putting in non-technical terms what is usually understood by the principle of regressive taxation.

MR. STEWART: It might have been better to use the technical term there.

MR. MARSH: No, because the more technical we

become the less able we are to lay down principles, which is our main endeavour in this brief.

MR. SCOTT: Contrasting the situation in England and in Canada, we submit that the English tax their people much more fairly because they rely much more upon income and inheritance taxes.

MR. STEWART: In your 20 per cent did you include provincial and municipal income tax?

MR. SCOTT: Yes.

MR. STEWART: Not only dominion income tax?

MR. SCOTT: No.

MR. STEWART: Your League objects to the sales tax as an improper form of taxation, and yet on page 28 you urge, do you not, that the quintessence of consumption taxes be adopted when you suggest state monopoly? Is there not a direct inconsistency between the two positions?

MR. SCOTT: Speaking for myself, I would say that the profits which the state may make from the operation of an economic monopoly in some form are a better way of raising revenue than the imposition of a sales tax on general commodities. The sales tax hits all ordinary foodstuffs. The monopolies suggested here, and those in actual operation, have relation to specific commodities only. We object to a general tax covering all sales that hit the necessities of life and affect poor people.

MR. STEWART: But you would put it on liquor, tobacco, matches and electricity? I should think that electricity would hit the poor people about as hard as any.

THE CHAIRMAN: My recollection is that there are a very large number of exemptions from the sales tax.

A great many commodities which the farmer and poor people consume are exempt. I have not the list before me, but I know that there is a formidable list of exemptions.

MR. SCOTT: That is true, and we naturally approve of that type of exemption.

MR. MARSH: We do not regard the socialization of some form of production as in the nature of a sales tax. It would not necessarily be used in that way. It might easily be that the state, if it wished, might have different prices for different groups. It might have a certain adjustment.

THE CHAIRMAN: I understood Professor Scott to say that the sales tax covered all commodities, and I merely wanted to point out that he was in error in that regard.

MR. STEWART: On page 25, about seven lines from the bottom, you suggest that the proper way to bring about equality between the east and the west would be towards protection for western agricultural prices -- and eastern as well -- rather than a lowering of the tariff on industry in the east.

MR. SCOTT: Where do you find that?

MR. STEWART: You will find that on page 25. You say :

" To equalize subsidy payments there must be an approximate equality of protection to start with: This can be affected either by moving towards free trade for eastern manufactures or towards protection for western (and eastern) agricultural prices. We suggest that the latter road is the one which should be travelled and that control of marketing, fixing of minimum internal prices for Canadian farmers"

MR. SCOTT: We do not mean that there should not be any alteration in the present tariff structure.

MR. STEWART: But generally that there should be a levelling up for agriculture rather than a levelling down for industry.

MR. SCOTT: The point we make is that when the industrialized east is highly protected and the producers in the agricultural west are not protected, the per capita payment of subsidies, which may look like an equal payment on paper, is unequal in terms of economic realities; and really the protection of agricultural prices is equivalent to what in the industrial field is the regulation of wages.

MR. STEWART: If you will turn to page 27 you will find that in the whole of the first paragraph, after the quotation, you demand a reduction in customs, excise and sales tax. Do you not think there is some inconsistency between the position taken on page 25 and the position on page 27?

MR. SCOTT: I agree that a rephrasing would make it clearer. We are contrasting two broad principles on page 25 and on page 27 we are dealing with a specific matter.

MR. STEWART: It occurred to me as rather a peculiar suggestion where at the bottom of page 29 you suggest a debt redemption levy. You say that it --

" would be a notable contribution by this generation of Canadians to the freedom and happiness of the next."

I put to you the view that this generation of Canadians has its own problems and its own load of debt to look after without being unduly anxious about the next generation.

MR. SCOTT: We are suggesting that a consideration of the interests of the next generation would make it desirable that we of this generation make some contribution towards getting rid of this burden of debt which we have allowed to accumulate.

MR. STEWART: Do you not think that this generation has its own problems to face without worrying unduly about the next?

MR. SCOTT: But we are the cause of those problems and we should pay for them rather than pass them on to the next generation who did not create them.

THE CHAIRMAN: Is that all, Mr. Stewart?

MR. STEWART: I think that is all, my lord.

THE CHAIRMAN: We wish to thank you, Professor Scott and Professor Marsh, for the brief which you have presented. It will receive due consideration with the other briefs that have been submitted.

EXHIBIT NO. 99: Brief submitted by the League for Social Reconstruction.

(At one o'clock the Commission took recess.)

AFTERNOON SESSION

The Commission resumed at 2.30 p.m.

THE CHAIRMAN: We will hear the Canadian Teachers' Federation.

MR. J. W. NOSEWORTHY and MISS JESSIE M. MORRIS were called.

THE CHAIRMAN: We are very much obliged to you for staying over, even if it did not enable us to accomplish what we had expected, to let the other parties get away. We appreciate your kindness in that matter.

CANADIAN TEACHERS' FEDERATION

THE CHAIRMAN: You have some questions to ask, Mr. Stewart?

MR. STEWART: Yes, sir.

BY MR. J. MCGREGOR STEWART (of Mr. Noseworthy):

Q. I just want to go a little further, Mr. Noseworthy, into the first paragraph in the second column on page 4 of your Brief, where you suggest that the Dominion has already interested itself substantially in education, and you detail its various activities in that paragraph. I am suggesting that the grant in aid of agricultural education was made pursuant to the Dominion's jurisdiction over agriculture, rather than as a gift for the purposes of education, that it was in pursuance of the Dominion's joint jurisdiction over agriculture, and that the provision for technical education was made as a part of the Dominion's general policy of civil reestablishment in 1919, when the men were returning from the front. I suggest that that was the prime motive behind it. Do you not think that is correct? A. I feel, sir, as we have stated in the last line of that column, that it was a recognition on the part of the government of two facts, that education is an interest of Canada, and secondly that the limited financial resources of the provincial

governments did not permit them to undertake a complete system of education. That is, we feel that a system of education without agricultural and technical education is incomplete, and that a complete system could not be introduced without federal support.

Q. But you would agree with me that the immediate cause of those two appropriations was as I have stated?

A. If you leave out the reference to the return of the soldiers, because I am not sure that that was a determining factor.

MISS NORRIS: I think that was not a determining factor in 1919 because the civil re-establishment of soldiers, and I am speaking of the area which I know best, was not carried out through the technical schools in Montreal, but partly in connection with McGill University. Representations were made to the Dominion government that those who were seeking employment in industries were not satisfactorily trained, and it was as a result of representations from the trades and labour people that the grants was given for technical education.

BY MR. STEWART (of Mr. Noseworthy):

Q. That provision was made at the first session of parliament after the cessation of hostilities, at any rate. Then you detail further down in that same column, Mr. Noseworthy, a number of cases in which the Dominion does take a share in education--the Royal Military College; the Department of National Defence, in connection with military and naval education; cadet corps in the schools; the education of Indians and of all persons in the Territories. In all those cases the Dominion's contributions to education are made because it is charged with these particular subjects under the D.N.A. Act. Is not that the case? A. Yes, to a certain extent I think

that is true. As I stated yesterday, our purpose in bringing forward those examples was to show that the Dominion government had already taken and was now taking a certain part in educational matters.

Q. Now would you turn to page 5, to the statistics you give at the top of the second column. Why were those particular years chosen, or were they chosen by you? Perhaps you just took them out of Maxwell's book?

A. I took them from Maxwell's book because they seemed to serve our purpose. It is true, I think, that it is within the past ten or twelve years that there has been a greater demand upon the provinces for social services than at any other period, and this particular group of years serves to show the increase that has taken place in provincial obligations during that period.

Q. Don't you think it would really be more helpful if we had a continuous period of years, showing the growth from year to year from the earliest times for which statistics are available? A. Except that it is only within the past ten or twelve years that many of the social services were inaugurated which are now such a burden on the provincial governments.

Q. On the other hand, if we take the year 1919, so far as the Dominion is concerned, there was a very big jump over any previous year, was there not? A. Yes, the Dominion debt had been increased.

Q. Not only the debt, but the ordinary expenditure per capita? A. During the previous four or five years, yes, by reason of the war.

Q. And 1919 and subsequent years took in re-establishment, and pensions also fell within the years following 1919?

A. Our point, of course, is that notwithstanding the fact that the Dominion debt and expenditure were increased because of those extra expenditures, their obligations were

considerably reduced while those of the provinces were increased.

Q. That is the point I was wishing to bring out, that whereas the expenditure on re-establishment had gone down since 1920, there has been very little diminution in the per capita expenditure by the Dominion on ordinary account. Then again, immediately following the year 1929, the Dominion ceased to manage the western lands, and the expenditures of the Department of the Interior practically passed out of the picture. So I am suggesting, Mr. Noseworthy, that perhaps those years 1919 and 1929 might not give an accurate picture of the growth of expenditure upon ordinary account? A. As far as the Dominion is concerned?

Q. As far as the Dominion is concerned. A. But I think the fact remains that provincial expenditures have increased at a higher rate than Dominion expenditures.

Q. I would also suggest that if you compare ten-year periods, you will find there was a tremendous jump in Dominion expenditures as compared with the ten years prior to 1919. Now if you will turn to your statistics at the top of page 7, was there any particular reason for selecting those three years, 1925, 1930, and 1934?

A. No, except that they give us again a picture of approximately a ten-year period. It is the period in which there was a considerable increase in school attendance. Probably no other period has seen such a marked increase in school attendance as those ten years, and yet at the same time there has been a reduction in the amount spent on education.

Q. You selected those years principally to show the variations? A. Yes, but incidentally I think that the increase in school population from 1929 to 1934 was somewhere about 100,000, and the decrease in expenditure

in education about \$40,000,000.

Q. That, I suppose, was a natural result of the depression years, when the young men could not find employment and so they continued attending school?

A. I am not sure that that is true. A questionnaire was sent to a large number of representative schools in 1934, and the pupils attending the secondary schools were asked if they were in school by reason of the fact that they were unable to find employment, and the answers showed that with the exception of a few suburban areas only a small minority of the students were attending secondary schools because of inability to find employment. The increased attendance was rather, I think, because of an increased demand on the part of the public for higher education.

Q. I think the experience of the Universities was that their attendance went up as the result of the inability of young people to find employment? A. I am not sure as to the university situation.

MISS NORRIS: The universities, I might point out, have had a decrease in attendance in the last year or two, according to the statistics.

MR. STEWART: Thank you.

BY MR. STEWART (of Mr. Noseworthy):

Q. Turning to your statistics on page seven, of the estimated value of lands, buildings, and so forth in the different provinces, you would not suggest, would you, that that is in itself a very reliable test?

A. We point out, I think, that these figures are collected from a great many school authorities, and while their estimates perhaps cannot be fully relied on, we still think they present a fair picture.

Q. I suppose the urban and rural percentages in each province would have to be analyzed, indicating the density

of population, before those figures could be taken as a guide to the contributions being made for education?

A. Yes, probably, before they can be taken as an exact guide.

Q. And the newer provinces would probably have a higher ratio of cost. Then on page nine the figures you give under "Vocational Education", indicate a great disparity between urban and rural students attending vocational courses in Manual Training and Domestic Science. Do you think, however, that the situation is correctly represented by giving the relative numbers of those attending these courses? A. I have no reason to think it is not, sir.

Q. Don't you think that the boys and girls in rural communities get both in their home training and in their surroundings very much more manual training and domestic science experience than the boys and girls in the urban districts? A. I am not sure that that is true. I do not know that the girl brought up in a farm home gets much more training in domestic science than the girl brought up in the average city home. I think probably the need in the rural community is just as great as in the city.

Q. You are particularizing now on the girls. A. I think probably the same is largely true of the boys, and the fact that several departments of education at the present time are attempting to institute manual training classes in the rural schools would seem to indicate that these departments, and I think all educators, realize the need of that.

Q. Don't you think that the average boy and girl in a rural community, both during the school term and in the vacation, come unto closer grips with their life work than the boys and girls in the cities? A. Yes,

if a boy is going to become a farmer.

Q. I said the average boy. A. I think he is getting closer to his life's work if he is going to follow the farm, but not if he is going to move into the city and enter into industry or any of the city occupations.

MISS NORRIS: On the other hand, if I may interject, Mr. Stewart, there is in the country a very decided need that a boy should know more about carpentering, for instance, and how to mend things, when they are quite a distance from a repair shop, and they perhaps in that way get to know more about carpentry and a little about electricity and mechanics, more than the city boy who is next door to a garage or some sort of shop where he can get these things done for him. On the other hand, the boy and girl on the farm sometimes get so much of one or two particular kinds of work to do that they become absolutely disgusted, and hence we have the trek from the farm to the city.

MR. STEWART: I am not suggesting at all that the vocational training in the rural schools is adequate, but that it is more adequate possibly than the conclusions to be drawn from these figures would indicate.

MR. NOSEWORTHY: I would say that educators generally throughout this country are agreed that the rural pupils are getting very little in the way of anything more than purely academic training.

THE CHAIRMAN: Before you pass from that, Mr. Stewart, may I ask Mr. Noseworthy, did you have the good fortune to be born in the country and be brought up on the farm?

MR. NOSEWORTHY: I was born and brought up in a fishing village.

THE CHAIRMAN: There are special lines of activity there, too. My own impression is that the average boy

in the country, which it was my own good fortune to be, acquires a knowledge of life and practical affairs and how to do things, carpentry, and so on, that the city boy does not get at all; and the country boy, if he does go to the city, has a great advantage over the city boy because of that practical knowledge he has acquired as a boy on the farm. Dealing with the everyday problems that come up puts him on his mettle. He has to do a bit of so many different kinds of work, carpentry, and so on, and above all he comes into touch with life at so many angles--he goes to market and does business--and this start which he gets in life gives him I think, although I may be unduly partial to the average country boy, an advantage over the boy in the city.

MR. NOSEWORTHY: I wonder if that is as true to-day, sir, as it was in your boyhood days? I think you will find to-day many more farmers employing, for instance, city carpenters, plumbers and electricians from the city, bringing in city help to put up their buildings, their homes and so forth, than was done in your day. I was just wondering if there has not been a change in the general situation?

THE CHAIRMAN: Well, that may be true.

MISS NORRIS: May I speak, Mr. Chairman? There was a Commission appointed to survey rural conditions in Brazil, and another in Mexico, in order to determine why there was a movement of the population from the country to the city, and as I remember the report of the commission on Brazil, it was very definitely established that rural education and the failure to integrate rural education with the life of the people was in large measure responsible for that movement to the city. In other words, I took it that rural education there was very much like rural education in Canada, and there

was little variety. What history was taught was centred mostly around city methods. There was very little taught that applied directly to the country. For instance, Botany, Nature Study, Biology, do not enter into rural school courses, and therefore the education of the children was not integrated with their daily life, and for that reason the city had its attractions. I was very much struck with that report, and from our study of rural conditions in Canada, it seems to me to be true also of the rural schools here. There is little that relates the activities in school to the life of a girl and boy at home.

THE CHAIRMAN: That might be quite true, but I should not have thought that Brazil, unless one knew all about the conditions there, would afford much of a guide for us. Conditions may be the same in Canada, but it does not at all follow that they are the same because of the difference between the two countries.

MISS NORRIS: On the other hand, there is the same trek to the city in both countries.

BY MR. STEWART: (of Mr. Noseworthy):

Q. Mr. Noseworthy, has your Federation given any consideration to what would be the cost to the Dominion in carrying out the various recommendations made in your Brief? A. We have given some consideration to that, sir, but we hesitated to suggest, for instance, what should be the amount of an equalizing federal subsidy. Various figures were suggested, but as we point out, it would depend to a large extent on the conditions under which it was granted. A subsidy granted on a per capita basis would of necessity have to be much larger.

Q. You did not get down to specific figures? A. No.

Unfortunately the research on that point has not been very complete because our research facilities are inadequate to deal with questions of that kind.

Q. It would require a very elaborate study? A. Yes, it would. We are suggesting that the federal subsidy, if granted, should be a generous one to meet the need.

Q. I suppose, too, you did consider the revenues and expenditures of the Dominion as they have been during recent years, and took that into account when making your recommendations in a general way? A. We felt in a general way that the Dominion can meet these needs, if that is what you mean.

Q. Figures were put in before the Commission on Monday showing in 1937 an excess of some \$78,000,000 of expenditure over revenue. That is not all on ordinary account by any means, but it is a very large amount. It is something not far short of the total income tax payments received by the Dominion in that year. You say that education is a matter of supreme national importance. I do not for a moment suggest that that is not correct, but is this not the case, that the most effective education is that which comes closest to the needs of the several communities? A. I think that statement is generally true.

Q. Do you not think, further, that the local governments would be in a better position to appraise the requirements of their provinces than the Dominion to appraise the requirements of all the provinces? A. I do not think there is any suggestion that the provincial departments cannot and do not appraise the need. On any occasion when committees of our Federation have approached provincial governments, the need has always been recognized by them, and it has been purely a question of financial ability to meet the needs. What we are

asking is that the Dominion assist the provinces in meeting the need that is already recognized.

Q. Yes, I see. You are not suggesting at all that the Dominion should assume any jurisdiction in the matter.

A. No.

Q. As to the sources from which the funds for education should come, is it your view that the tax on real estate is inadequate for the purpose? A. We think, sir, that it is both inadequate and unfair. We think that home owners should not be the only people who, to the extent of eighty or ninety per cent, are asked to bear the cost of education. We think the cost of education should be spread over a much wider tax base than real estate.

Q. It is still considered educationally sound, is it not, that the home and the school go hand in hand? Is not that a desirable thing? A. It is not necessary that the home should pay for the school.

Q. I am not suggesting that at all. A. It is certainly sound educational procedure. I presume, that there should be cooperation between the home and the school, but that does not mean financial obligations on the home.

Q. Would you feel that anything that tended to discourage home building was bad for education? A. Anything that discourages home building is bad not only for education, I would say, but for any other national interest.

Q. Is that fundamentally the basis of your objection to the schools being maintained almost entirely by real estate taxation? A. Our objection to the schools being maintained almost entirely by real estate taxation is based on the fact that education is not receiving adequate support from that source. That is our point, that education is suffering as a result of that practice.

MISS NORRIS: I think further, sir, that it is creating a separation between the school and the home because the home owner feels that he is paying so large a share of taxation, and blames the school for it.

MR. STEWART: Yes, that would be an unfortunate result to bring about.

MISS NORRIS: But it has already been brought about in some places.

BY MR. STEWART (of Mr. Noscoworthy): Q. There is just one other point. If you will turn to the first paragraph in the first column of page 11 of your Brief, Mr. Noscoworthy, do you really think there is any danger of Canadians falling behind competitively with the Americans by reason of any weakness in our school system? A. We are pointing there to a possible danger that may result if not only the United States but also other countries develop a system of education that is superior to ours. We think that if we are to compete fairly as Canadians with other countries, our educational system must be kept abreast of theirs.

Q. You do not see any immediate danger from that standpoint on this continent, do you? A. Except this, that we find the more progressive States of the Union and most European countries are supporting education from central funds. State and federal governments are co-operating in the support of education to a much greater extent than is taking place in Canada.

MISS NORRIS: Then, too, in the United States, in 27 States of the Union, the lowest diploma for a teacher may be obtained only after two years of professional training, after passing matriculation examinations, which is a higher standard than has prevailed in almost any

province in Canada, and if the teacher is an integral and necessary part of the school, there is a handicap in competition.

THE CHAIRMAN: There is just one matter, Mr. Noseworthy, that I would like to mention, and that is in reference to the ability or supposed ability of the Dominion to carry additional charges. Did you have in mind the fact that from 1930 to 1936 the public debt of Canada had been increased by \$830,000,000? That is, we had to borrow that amount to meet our expenditures. Already in Canada two provinces have said that their financial position is such that they cannot meet their liabilities. If the Dominion were to continue piling up debt in the future at anything like the rate from 1930 to 1936, one would wonder how soon the time would come when the Dominion would find itself in a similar position. Is it not a matter that must receive the gravest consideration--this huge accumulation of national debt? So far, even in these years of much better conditions, by reason of untoward circumstances even the Dominion budget has not been balanced. Where is the Dominion to get the revenue? Is it to go into debt for further advances and grants, or is it to raise the money by new taxation. If so, where? We are presented with the view, on the one hand, that the debt must be reduced and taxation reduced. On the other hand, you present a brief which suggests that public expenditures must be materially increased. Now where do we strike a balance between those two views?

MR. NOSEWORTHY: From our point of view, we look upon municipal debt, provincial debt, and Dominion debt as more or less parts of the same debt borne by all the

people of Canada, and what we are asking is not so much an increase in expenditure as a shifting of the cost.

THE CHAIRMAN: The reason I raise the question is that on your proposals there must be an increase, because you say the present support is not adequate. I am not questioning your statement that it is not adequate. Undoubtedly the sacrifices the teachers have had to make, particularly in rural schools in certain parts of Canada are beyond praise, on the one hand, and beyond what anyone could reasonably expect, on the other. But I am dealing with just the broad general question. Your proposals would involve not simply a shift; they would involve an increase, because you cannot get these improved educational facilities without an increase in expenditure.

Now where could existing expenditures be cut to meet that increased expenditure for education? Or should the country go further into debt? Where is the source from which the money could be secured by taxation? You may not have given the question consideration, and if not, I will not trouble you; but it is a problem that perplexes us in considering these matters.

MR. NOSEWORTHY: We were faced with that question, and quite frankly I say that we felt that we were not in a position to give an answer to it. We felt this Commission was much more conversant with public finance than we could ever hope to be, and in a much better position than we are to solve that problem. What we are anxious to do is to put before you and the general public the needs of education. We feel that education is of sufficient importance that it should receive, perhaps after national defence, first consideration in the country's general scheme of finance, and that

whatever else has to be reduced, it should not be
education.

(Page 2916 follows)

THE CHAIRMAN: You are very familiar with the old adage: "you must cut your coat according to your cloth". The question is, where can the shift be made that would enable more to be given to education than is now being given; and if a shift is to be made must that shift be not be made by the provinces and in a varying manner?

MR. NOSEWORTHY: Well, actually we feel there is no possible hope of getting an adequate system of education instituted and maintained by the provinces unless the provinces are relieved of some of their present burdens. We feel that wherever the cut is to be made it may be made possibly anywhere in the national interests rather than in education; that from the standpoint purely of national efficiency and national interest, the cut should not be made in education.

THE CHAIRMAN: Thank you very much. It has been a very interesting brief, and we appreciate the matters you have brought to our attention.

THE CHAIRMAN: The League of Nations Society of Canada is the next on our list.

Mr. MacKenzie, you appear for the League of Nations Society along with Mr. Inch?

MR. NORMAN MACKENZIE and MR. R.B. INCH were called and examined.

MR. MACKENZIE: Mr. Chairman and Gentlemen, the National Council and executive of the League of Nations Society in Canada requested a small committee to prepare a report or draft a brief to present to you. The reasons are two-fold.

In the first place the function of our society is in the main that of preventing, if possible, the risk of war. We believe that that task, if it could be successful, would immeasurably assist Canada as well as other countries in respect of economy and financial matters.

The removal of that burden and of that risk would, I believe, provide the funds which seem to be so urgently required and desired by other services, such as education, which was before us a few moments ago. But I do not propose to deal with that. The other, and the part that we thought might contribute something useful to us, is a discussion in respect of the external affairs or the foreign relations of Canada. We consider them to be of the utmost importance in every sense of the word. Because I happen to know that there is an opinion -- and quite naturally so --- among certain individuals, communities or sections, that it tends to be academic and highbrow, I have taken the risk of trying to collect a few statistics --- I am not an expert in this field and I had to rely on my friends who are statisticians and economists. I thought it would be useful to compare, for instance, the importance of Canada's external affairs in terms of trade with our national income. I thought it would be interesting to find out the cost of the administration which is borne by the national budget in terms of external affairs, and contrast it with the total revenue. I thought it would be useful to take the figures of 1867 or 1870 and see how we have developed along these lines and how extremely important these matters have become as contrasted with the earlier period.

I find some very interesting facts. I find, for instance, that Canada has become the sixth or seventh most important industrial country in the world, which means that there are only five or six other countries with greater industries. I find, in the second place, in the year 1937 there were only three countries in the world with larger exports, and only seven with larger imports.

THE CHAIRMAN: On the average, how do we stand?

MR. MACKENZIE: We ran third, fourth, fifth, sixth in these figures. We come within the first six in practically all of the recent years that I have examined.

Some of the totals, I think, might be interesting. For instance, I find in terms of total trade that in 1868 our total trade, excluding coin and bullion, imports and exports, was \$119 million; whereas in the year ending December, 1936, the figures were \$2,550,000,000, an increase out of all proportion. That latter figure can be contrasted with our total national income as estimated for the same period. That runs, as I have it, to about \$4,806,000,000.

In other words the part of our external affairs which is included in trade is about equal to 50 per cent of the total income. The farther thing that I thought might be interesting is this: I totalled up the costs of what I term "External Services", which includes National Defence, Trade and Commerce, External Affairs. Under National Defence, or within that field, I placed the annual of the cost of the last war and I find that we have paid, according to the estimates, or will have paid, according to the estimates in the current fiscal year, some \$207 million for these services; whereas our total estimated revenues are only \$485 millions.

Between 40 per cent and 50 per cent of our expected revenues must be spent for this business that we are interested in, external affairs.

THE CHAIRMAN: Have you a breakdown of this \$200 odd millions?

MR. MACKENZIE: I have these. On Defence the estimates this year are \$32,196,235; expenditures for war services of the current year, and these are continuing expenditures; they were about the same last year and are

likely to be the same next year, as they are interest payments on the War Debt, pensions and things of that kind; they amount to \$158,500,000. For external affairs the amount is \$1,600,000. The amount spent on the Department of Trade and Commerce is \$9,000,000.

Then, I find that our total war costs to date, --- again I include within our external affairs these matters, which is one of the results of our being in an international society ---- amount to a total of \$4,761,543,508 up to the 31 March, 1937. When you contrast that with the insignificant figures in 1867 or 1870 I believe it is most impressive. It is for those reasons that we thought it was not only within the terms of your reference, but of importance in a practical as well as in an academic sense to bring them before you.

I do not propose to deal with that wider aspect. I propose to deal with one particular section of the problem, which I think is of great importance, and that is the treaty making power in respect of its legislative and executive aspects, the legal nature or position of the treaty making power and of the responsibility for carrying out our international agreements. That is the first point I want to discuss.

I suggest that it is one of the attributes of an international personality, one of the rights and one of the duties of a nation that she should be competent to carry out and perform her international obligations. I know there are some in Canada who question whether Canada is a nation or an international person. I happen to be an international lawyer, and I personally have no doubts on the matter. In my opinion Canada is a nation and is an international personality; but as my opinion is just the opinion of an individual I should prefer to refer you to the view of our Chief Justice, Sir Lyman Duff, and of the

Privy Council as set out in the recent decision, which is termed the "reference case" in respect of the treaty making power.

Sir Lyman Duff says:

"The possession of equality of status with Great Britain in respect of all aspects of external as well as domestic affairs is thus affirmed in language admitting of no dispute as to its intent or effect."

I find Lord Atkin saying this in the Privy Council decision:

"The obligations are not obligations of Canada as part of the British Empire, but of Canada by virtue of her new status as an international person."

Further on he states ----

THE CHAIRMAN: Mr. MacKenzie, will you kindly give the reference and the page you are reading from for the purpose of the record?

MR. MACKENZIE: The reference to Lord Atkin is from 1937 1 D.L.R., pages 680 and 682. His second statement is as follows:

"It follows from what has been said that no further legislative competence is obtained by the Dominion from its accession to international status, and the consequent increase in the scope of its executive functions."

Then, his concluding remarks on pages 683 and 684; he says:

"It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations."

The first reference to Sir Lyman Duff was from 1936 3 D.L.R. at page 676.

The point I wanted to make, sir, is that in the opinion of the two highest authorities for Canada, Canada has acquired an international status, and it has become for purposes of constitutional and international law an international person.

Having given that authority, I want to go on to show that in the opinion of outstanding authorities the acquisition of international personality or nationhood brings with it certain obligations.

Mr. Justice Holmes of the United States Supreme Court in *Missouri v. Holland* says:

"It is not to be lightly assumed that, in matters requiring national action, a power which must belong to and somewhere reside in every civilized government is not to be found."

The reference is 252 U.S. 416.

Then further I find that the United States Government itself produced a report and I give a citation from 29 American Journal of International Law, Page 473, in which it is stated that:

"The right to treat with other nations rests wholly in sovereignty and extends to every question pertaining to international relations."

And further at page 476 in the same series the following appears:

"In the light of these opinion is cannot well be denied that the treaty making power is a national rather than a federal power and this distinction measures the whole difference between its jurisdiction and the jurisdiction of Congress in relation to the so-called reserve of power."

Then, I find a very distinguished International

lawyer and scholar, Mr. Pitman B. Potter in 28 American Journal of International Law, at page 463, stating this:

"The power of a state, such as the United States, ---"

and I would interject, Canada ---

"and derivatively, of its government, to carry on diplomatic relations and conclude treaties with other states arises at least in part, if not primarily, from international law."

And he contrasts that with constitutional. He goes on to state:

"In the absence of such an international law power, the clauses of the constitution could and would have no effect in creating it, and if no clauses existed in the constitution purporting to create or bestow such a power it would belong to the nation anyway, by virtue of common international law.

The second point to be noted is that international law bestows a plenary power of concluding treaties upon every state. A priori, and in the absence of any valid restrictions of a special nature -- "

And so on. Then, he goes on at page 473, as follows:

"International law is superior in authority to national constitutional law, and the latter may not validly contravene the former; the treaty making power is possessed by the national state by virtue of international, not national law, where it is a priori plenary as to the subjects with which it may deal or the forms of action for which it may provide; while international law to some degree permits the national state to adopt its own

procedures for conclusion of treaties, including approval by representative bodies, it would not permit adoption of procedures seriously impairing the exercise of that power; where conclusion of a treaty is mandatory upon a state under international law, the latter may not by national constitutional law escape that obligation; where it is permissive the state may refuse to conclude a treaty in an instant case, but may not by national law reduce its own power, under international law, or that of its treaty making agency, the repository of this international law power "

Then, sir, I should like to state a British opinion which I have set out in Appendix B to this brief at page 14, where the British Government in considering this problem states:

"Where a state is responsible for the conduct of the foreign relations of another political unit (e.g. the colonies, protectorates, or protected states), or where the constitutional arrangements prevailing in a state vest the responsibility for external affairs in a common or central government while vesting the responsibility for other matters in the government of a subordinate unit (e.g. unions of states or federal states), responsibility for the fulfilment of the obligations prescribed by international law rests upon the government conducting the foreign or external affairs of the state. It is with that government alone that foreign states maintain relations. The distribution of powers between itself and the other or subordinate units on whose behalf it is entitled to speak is a domestic matter with which foreign states are not concerned. A government which is the appointed organ

for the conduct of the foreign affairs of other units cannot evade responsibility by alleging that constitutionally its powers of control over these units are inadequate to enable it to enforce compliance with international obligations."

THE CHAIRMAN: Mr. MacKenzie, this declaration which you have just read was part of the statement of the broad point of view at a conference, I think.

MR. MACKENZIE: Codification of international law at the Hague, 1930.

COMMISSIONER ANGUS: 1930 or 1920?

MR. MACKENZIE: 1936. Then, the alternative or corollary to that is the lack of provincial powers in respect of international affairs and treaty making. There is a consideration of that matter in Sir Lyman Duff's judgment in 3 D.L.R., 1936, at 690, where he says,

"In no respect does the Lieut.-Governor of a province represent the Crown in respect of relations with foreign governments."

He goes on to say that foreign relations and treaty making are a prerogative of the Crown.

THE CHAIRMAN: As I recall it there is no challenge to that decision in the judgment of the privy council.

MR. MACKENZIE: Except, as I propose to refer to in a moment, Lord Atkin states that the provinces, as one of their claims, contested the executive power of the government of Canada to enter into obligations. While he did not discuss the matter he took care to point out that he was not saying anything about it.

The reason I refer to it as a possibility is that read the judgment of Mr. Justice Rinfret in the Reference case with a great deal of interest. I find there that apparently his problem was not the problem of the legis-

lative powers of the Dominion in respect of these matters. He felt, apparently, if I interpret him aright, that if the treaty was properly made then the dominion was under an obligation to implement it. But he suggests the lack of power in the dominion executive to make that particular kind of treaty. While it did not occur to me in view of the general practice and the general opinion --- there was no serious opinion contesting the executive power of the dominion in respect of treaties --- I thought it was an extremely important matter, and one that should be brought to your attention. If it needs classification, and it is possible to clarify it, it should be done.

THE CHAIRMAN: I have not read that opinion for some time, but the impression I gathered from reading it was that he thought as a matter of constitutional practice the dominion should consult the provinces before entering ---

MR. MACKENZIE: In respect of those conventions which he had in mind.

THE CHAIRMAN: Conventions which did affect provincial matters that fell under section 92. I did not read it as an attempt to lay down the proposition that the dominion was legally precluded from doing it. You may be right. I am just speaking from my recollection of it.

MR. MACKENZIE: I have the judgment here. This is what Mr. Justice Rinfret says:

"It follows from all that I have said that, in my opinion, the draft conventions upon which is based the legislation now submitted to us have not been properly and competently ratified, that they could not be so ratified without the consent

of the legislature in each province, both by force of the B.N.A. Act and upon the proper interpretation of art. 405 of the Treaty of Versailles; and that, for that reason, the acts now submitted are ultra vires of the parliament of Canada."

He goes on, and in his earlier discussion which I have here I rather gather that in respect of these peculiar conventions, at least, he doubted the executive power of the Dominion. I thought it worthy of bringing to your attention for consideration.

THE CHAIRMAN: Quite.

MR. MACKENZIE: But the main question, as I see it, is the question in respect of our legislative power to implement treaties. The reasons why I think there is that question are the judgments of the privy council to which I have made reference, as set out in 1937 1 D.L.R., at page 679, and it is also given in the brief at page 10. This is a statement of Lord Atkin. He says:

"In a State where the Legislature does not possess absolute authority, in a federal State where legislative authority is limited by a constitutional document, or is divided up between different Legislatures in accordance with the classes of subject-matter submitted for legislation, the problem is complex. The obligations imposed by treaty may have to be performed, if at all, by several Legislatures; and the executive have the task of obtaining the legislative assent not of the one parliament to whom they may be responsible but possibly of several Parliaments to whom they stand in no direct relation ---
The first ground upon which counsel for the

Dominion sought to base the validity of the legislation was section 132. So far as it is sought to apply this section to the conventions when ratified the answer is plain. The obligations are not obligations of Canada as part of the British Empire, but of Canada, by virtue of her new status as an international person, and do not arise under a treaty between the British Empire and foreign countries. This was clearly established by the decision in the Radio case, and their Lordships do not think that the proposition admits of any doubt. It is unnecessary, therefore, to dwell upon the distinction between legislative powers given to the Dominion to perform obligations imposed upon Canada as part of the Empire by and Imperial Parliament, and the legislative power of the Dominion to perform obligations created by the Dominion executive responsible to and controlled by the Dominion Parliament. While it is true, as was pointed out in the Radio case, that it was not contemplated in 1867 that the Dominion would possess treaty-making powers, it is impossible to strain the section so as to cover the un contemplated event ... It appears that all the members of the Supreme Court rejected the contention based on section 132, and their Lordships are in full agreement with them ... Their Lordships are satisfied that neither case (Radio or Aeronautics) affords a warrant for holding that legislation to perform a Canadian treaty is exclusively within the Dominion legislative power. For the purposes of ss. 91 and 92, i.e., the distribution of legislative powers between the

Dominion and the Provinces there is no such thing as treaty legislation as such, the distribution is based on classes of subjects; and as a treaty deals with a particular class of subjects so will the legislative power of performing it be ascertained. No one can doubt that this distribution is one of the most essential conditions, probably the most essential condition, in the inter-provincial compact to which the British North America Act gives effect ... It would be remarkable that while the Dominion could not initiate legislation however desirable which affected civil rights in the Provinces, yet its Government not responsible to the Provinces nor controlled by provincial parliaments need only agree with a foreign country to enact such legislation, and its parliament would be for with clothed with authority to affect provincial rights to the full extent of such agreement It follows from what has been said that no further legislative competence is obtained by the Dominion from its accession to international status and the consequent increase in the scope of its executive functions. It is true as pointed out in the judgement of the Chief Justice, that as the executive is now clothed with the powers of making treaties so the parliament of Canada, to which the executive is responsible, has imposed upon it responsibilities in connection with such treaties, for if it were to disapprove of them they would either not be made or the Ministers would meet their constitutional fate ... It must not be thought that the result of this decision is that Canada is incompetent to legislate in

performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status she incurs obligations they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers; in other words, by cooperation between the Dominion and the Provinces. While the ship of state now sails on larger ventures and into foreign waters she still retains the water-tight compartments which are an essential part of her original structure."

In the light of that statement, I submit that there is a problem and a serious problem. Because of the importance of external affairs to Canada, and because Canada has become a nation it is now responsible in international law for the conduct of her own affairs internationally. Because international law and national self interest and expediency both require that Canada should carry on the conduct of her external affairs and carry out her international obligations intelligently and expeditiously. Fourthly, as set out in the brief because Lord Atkin's judgment has thrown doubt on Canada's powers to do this in respect of treaties.

For that reason I examined Lord Atkin's judgment with some care. I did this, and in all deference, I beg to differ from him in regard to two of his statements. The first is his statement in respect of the difference between federal states and unitary states in respect of the treaty making powers, and the implementing of

treaties.

It is true that within the constitution there is a very real difference between a federal state and a unitary state with respect to giving effect to international obligations. I have examined all of the constitutions of all of the federal states, and I have found nowhere anything of the limitation which in fact His Lordship suggests.

The other point I wish to make has to do with his views as to the persisting happy state of things in Canada. I cannot agree with that. To me, as a Canadian, living in Canada, the situation is anything but satisfactory. I have more or less summarized that as set out in the middle of page 12 of the brief. This is what I say:

"The situation, then, which has arisen as a result of this opinion of the Judicial Committee is one in which the only executive competent to bind Canada internationally cannot give effect to these obligations, if they 'affect' matters set out in section 92 of the Act."

I emphasize the word "affect". It is not in the B.N.A. Act. It has been a gloss, as it were, brought in by the opinions of the privy council. The words in the B.N.A. Act are "in relation to", which I submit is quite different from "affect".

THE CHAIRMAN: There is no doubt there is a very marked difference between the two as pointed out in the judgment of the Supreme Court, written by Sir Lyman Duff. He discussed the difference between legislation "in relation to" as subject matter falling under 91 and 92, and legislation that affects the subject matter falling under 91 and 92.

MR. MACKENZIE: I continue:

"The dominion executive has no voice in or control over the legislatures which alone have this power. This means that whereas the dominion government is bound internationally, the provincial legislatures are not bound and may refuse to permit these obligations to be carried out. Even if a provincial legislature pass legislation to give effect to international obligations, it may repeal such legislation at any time and thus place the dominion in default internationally. Or several of the provinces may implement the obligations while the others refuse, -- all of which makes it difficult, if not impossible, for the dominion government to enter into treaties with other countries."

I further summarize it on page 13. I say:

"This difficulty is increased by the fact that unless the dominion can get a ruling of the privy council in advance it cannot be sure that a treaty to which it in good faith becomes a party, as being within the competence of the dominion, will not be challenged at some future time by an individual or a province and be held not to be within the dominion legislative competence and so not in force."

This would, of course, leave the dominion in default:

"(1) Because, at the present time the Dominion executive alone, is competent to negotiate treaties:

(2) Because the Judicial Committee has held in its most recent decision on the matter that the power to implement treaties is divided between the Dominion Parliament and the Provincial

legislatures in the same way as the ordinary legislative power is divided by section 91 and 92:

(3) Because it seems that once a treaty or convention is signed and ratified, it then becomes binding upon Canada internationally:

(4) Because the Dominion executive cannot ensure in advance of a decision by the Privy Council that the subject matter of the proposed treaty is within the legislative competence of the Dominion Parliament:

(5) Because it cannot ensure that the Provinces will give effect to it if it is not within Dominion competence:

(6) Because, as a result of the above, the Dominion is unable to enter into any treaty or convention without risking international default:

(7) Because the Provinces are unable to enter into any treaties:

(8) Because no arrangements exist by which the provinces and the dominion can cooperate to satisfactorily enter into and carry out treaties and conventions:

(9) Because this is a serious handicap in the modern world:"

It seems to me that the commission should give serious consideration to the problem. With that in view I went through the material that was reasonably accessible with respect to this matter with a view to discovering the story of the problem and any light that might be thrown upon it by that history, and by the experience of other countries.

The first thing I did was to examine the literature of confederation with a view to try to discover whether there was anything in it that dealt with international affairs or external affairs. I must confess, that as I had expected I found very little because the provinces in Canada had been up to that time nothing more than relatively unimportant colonies. I did find, however, one statement which you will find set out on page 5 of Appendix A.

(PAGE

(Page 2950 followw)

At page 5 of appendix I, I quote the remarks of Mr. Cardwell in the British House of Commons in the Debates on the British North America Bill. He said:

" Well then, sir, look at them in their foreign relations. During the time that I had the honour of holding the Seals of the Colonial Office, duties of no provincial or ordinary character were necessarily discharged by Canada."

He was then speaking of Ontario and Quebec:

" At the time when the St. Albans raid excited so much alarm and attention in this country what were the duties discharged by the government of Canada and the Governor General to whom my right honourable friend has paid so just a tribute? Canada called forth an army from among her population to guard her frontiers, and the legislature passed an act which rendered raids of this kind impossible in the future. The highest duties -- legislative, judicial and executive -- were performed by that province. Then again, look at the disadvantage we incurred when we endeavoured at Washington, to negotiate a renewal of the reciprocity treaty. Every part of that treaty, if we had succeeded, must have been submitted to five parliaments before it could have received the royal assent. In negotiating with foreign powers is it desirable that treaties should be ratified by one parliament or is it better that they should be subject to the accidents which they are liable in passing through the parliaments of five small countries. The Fisheries too are regulated by the laws of the

"different colonies and surely in a matter of such vital importance it was highly undesirable that we should have been compelled, in negotiations between this country and the U.S.A., to submit these negotiations to the approval of several parliaments.

That case, fortunately, was attended by no evil results, but still, I think, those considerations go far to prove the enormous advantage which such a scheme of consolidation as that proposed by the bill before the House is likely to confer on both the colonies and the Mother Country."

The next thing I did was to examine the British North America Act itself in respect of external affairs, and I found no mention under that name in the Act. The legislative powers are in the main set out in Sections 91 and 92, and one can there see that certain matters such as defence, immigration and so on are in the dominion field while certain others such as property and civil rights fall within provincial jurisdiction.

But there is one outstanding section, namely, 132, which obviously was put in to provide for a certain situation, to meet a certain difficulty -- the situation, as I conceive it, where the competent executive entered into international obligations which must be given legislative effect; and in order to meet the difficulty they inserted Section 132 which gave to the dominion parliament the power to legislate and to give effect, both for the provinces and for the dominion.

The wording of Section 132 is rather peculiar. It declares that this power shall come into existence in respect to treaties made between the Empire and foreign countries. I was somewhat puzzled and greatly interested in the use of that language, because to the best of my knowledge it was an innovation.

I have looked through all of the treaty series from the beginning back as early as one can find treaties and I find no mention of "British Empire" in the contracting parts of the treaties, until 1919 when it first appears in the Treaty of Versailles.

THE CHAIRMAN: In all those earlier treaties up to 1919, is the contracting party His Majesty?

MR. MACKENZIE: The contracting party is His Majesty, and the government or rather nation or state is referred to as Great Britain; and I think it is rather interesting that this same difficulty in respect to terminology carried over as late as the Halibut Treaty of 1923, where the American Senate tried to impose a reservation or to make a change in the agreed text of that treaty so as to make it applicable not only to Canada but to the inhabitants of Great Britain.

They were obviously seeking an assurance that would make the treaty binding not only upon Canada but upon the citizens of Great Britain. As I say, it appeared to me and it does still that the courts had to interpret that section, the words being an innovation; they were new. The next thing I did therefore was to examine the decisions of the courts and the Privy Council.

You will find set out in the brief the relevant sections from those decisions, both provincial, Supreme Court of Canada and Privy Council. Without exception the dominion legislation to give effect to international treaties was upheld regardless of whether a treaty was an Empire treaty in the sense that it was applicable to all parts of the Empire, all parts of what we term the British Empire, or whether they applied, as does the International Boundaries Water Treaty, to Canada alone.

My conclusion from that investigation was that the important party or person in respect of the obligation was His Majesty the King.

I also examined the statements of public men, debates in parliament, and the writings of distinguished scholars on the subject, and I note that while they recognize the difficulty, there was up until 1937 no problem of the kind that now confronts us. No problem of that kind was raised as a result of the proper executive entering into treaties and the dominion parliament giving legislative effect.

I then turned to the practice in relation to treaties since 1919, and between 1919 and 1927 we do find the British Empire figuring in treaties in the contracting or enacting sections; and if we wanted to be strictly within the terms of the British North America Act, I think we could argue that they were the only treaties which fitted the exact language of Section 132 of the Act.

THE CHAIRMAN: Of course, the language in 132 must have been intended to apply to the existing method of making treaties.

MR. MACKENZIE: I do not think there is any question about that.

THE CHAIRMAN: Have you set out the then existing method of making treaties?

MR. MACKENZIE: The then existing method of making treaties was this. His Majesty, on advice from the proper executive, the competent executive, which was the executive in Great Britain, would under full powers appoint a plenipotentiary to negotiate and sign the treaty, and in due course, when the agreement was reached and the treaty signed, His Majesty, again on the advice of the competent executive -- in all cases, at that time, the executive

in Great Britain -- would ratify and approve of the treaty which thereby became binding.

THE CHAIRMAN: In both cases, upon the Great Seal being affixed.

MR. MACKENZIE: The Great Seal was affixed; and the Great Seal, I may say, is still affixed. The procedure is exactly the same in every detail, there being no difference whatever --

THE CHAIRMAN: Except --

MR. MACKENZIE: --- except in respect of advice which His Majesty receives from the executive. By reason of the constitutional developments between 1914 and 1928, the then competent executive has surrendered its powers, temporarily at least, or surrendered it to the extent of not exercising them, except upon request or with consent.

That of course means that if the powers are surrendered, and if the international person, Canada, is to carry on its international relations adequately, some other executive must have taken its place in the matter of advising His Majesty.

THE CHAIRMAN: His Majesty is the head of the state and, as such, he commissions all diplomatic representatives to form courts; and His Majesty in reality--- though the other expression was used from 1919 to 1920 and something -- was still the one who gave full powers to the diplomat. And it was His Majesty who ratified under the Great Seal, in both cases.

MR. MACKENZIE: And the only question another state asks, in order to discover whether a treaty is legally binding internationally, is whether His Majesty is a party to it.

THE CHAIRMAN: Quite so. If the plenipotentiary

present credentials signed by His Majesty under the Great Seal, that is all the foreign powers are concerned with; and if the ratification is signed by His Majesty under the Great Seal, that is binding.

MR. MACKENZIE: Yes, it is binding internationally in law.

THE CHAIRMAN: Is not the effect of the decision simply this -- at least one important effect -- that so long as Canada did not advise His Majesty, but he was advised by the executive in London, the parliament of Canada had full power to legislate in respect of the treaty; but when, by Canada acquiring her improved status, she attained the right to advise His Majesty, according to the decision of the Privy Council she thereby lost the right to legislate? With the greatest respect to the Privy Council, to me it is a most amazing decision.

COMMISSIONER ANGUS: The executive which advised His Majesty in 1867 was itself responsible to a body which could have amended the British North America Act.

MR. MACKENZIE: Not only could the executive which controlled the Imperial government have amended the British North America Act, but it could have passed legislation directly implementing treaties for Canada if it had chosen to do so. It not only had the power, but it doubly assured itself by inserting another power which it did not need to have in the Act itself.

COMMISSIONER ANGUS: In concluding a treaty it was doing nothing more than it could have done by legislation, assuming that it had a majority in parliament, and there might be a question as to whether that right could properly be inherited by an executive responsible to a legislature which was itself bound by the British North America Act.

MR. MACKENZIE: True, and that is the reason why I cite Mr. Justice Rinfret's opinion. He doubts, and I gather there are others who doubt, whether there has been a transference of prerogative executive rights from London to Ottawa in respect of advising His Majesty and thereby entering into an obligation. But my own opinion as a lawyer is that if His Majesty, under the proper form and under the proper seals, enters into an international obligation, it becomes as fully binding if the advice comes from Ottawa as if it comes from London. There is of course the political question or the question of practical policy as to the wisdom of it, but that is another matter which I do not propose to discuss now.

THE CHAIRMAN: I find it difficult to understand this extract from the judgment of the Privy Council: "It is unnecessary therefore to dwell upon the distinction between legislative powers given to the dominion to perform obligations imposed upon Canada and so on. To me, it is an astounding proposition.

MR. MACKENZIE: The next thing I did was to examine the practice in other federal countries, and you will see the results of that examination set out in appendix (b). In every one of them, as far as I could discover, there was no question that the federal, that is to say the central authorities, were fully competent to enter into and implement international obligations. Those of the greatest interest I found to be the United States, Australia and Switzerland.

THE CHAIRMAN: Just a moment, Mr. Mackenzie. To prevent any possible misunderstanding, and for the purpose of the record, may I say that the observation I was making was in reference to treaties proper that fell

clearly within 132, if made by the Imperial executive, as compared with treaties that did not fall within 132, according to that statement. I am not passing any opinion on these particular conventions. I am dealing with the broader question raised by that section.

MR. MACKENZIE: On page 40 I have summarized my conclusions; and I find, as I have just stated, that in all cases the central or federal authority seems to have almost exclusive power, both in its executive and its legislative aspects. In the United States the federal authorities alone may make treaties, and treaties when made are "the supreme law of the land". May I quote from page 40:

" The only question in the United States then is this, are there any matters in respect of which the United States cannot make treaties?

The general answer seems to be no, provided they are proper subjects for international consideration and provided the constitution does not expressly forbid them. This power of the federal authorities to override state rights by the treaty power does not seem to have occasioned any particular difficulty or to have resulted in disaster for the United States any more than the power of the dominion to declare any "provincial" works or undertakings to be for the general advantage of Canada, thus bringing them within dominion legislative jurisdiction; has created a problem in Canada. The political expediency of such action as well as the intelligence and patriotism of those in office, seem to have been adequate safeguards against abuse."

I may add that, not having had the opportunity to do so earlier, there are two other United States decisions which I should like to cite. The first is *Santovincenzo v. Egan*:

" The treaty making power is broad enough to cover all subjects that properly pertain to our foreign relations."

That will be found in 284 U.S.30(1931). The second is *Curtis-Wright v. Export Corporation*:

" The foreign relationspower arises not from the constitution, not by grant from the states, but from our existence as a nation and by the law of nations."

The Reference is 57 S.C.216 (1936). And further, Mr. W.G.Rice writing in the American Labour League Review, at page 43, makes this statement:

" No treaty or statute of Congress to carry out a treaty has every been held unconstitutional, but much state law has been overborne by treaties."

To proceed with the brief:

" In Australia the situation is not quite so clear as in the United States but there too, the view seems to be that subject to the two limitations - (1) that the treaty-making power cannot be used to amend the Constitution and (2) that it must be used bona fide with respect to matters of proper international concern,- the federal authorities may make and implement any treaties."

I believe that the latest Australian Supreme Court decision, the *King v. Burgess*, which I cite at some length in Appendix (b) bears out that conclusion.

If I may return to a summary of the position so far as Canada is concerned, I have stated in the first place on the decisions that Canada is a nation; in the second place, I have stated, on the decisions of international courts, of national courts, and of governments and all authorities, there is a duty upon the state to carry out its international obligations.

I have suggested that as a result of the decisions in the reference case, by the Privy Council, we are confronted in Canada with a problem in respect of this whole question; and with that in mind I go on at page 44 to make some concrete suggestions. I quote:

" In line with what we believe to be the intention of the Fathers of Confederation and with the literal meaning of section 132 of the B.N.A. Act that section might be amended to read as follows:

'The Parliament and government of Canada shall have all the powers necessary or proper for entering into treaties, conventions and agreements and for performing the obligations of Canada or of any province thereof toward foreign countries, arising under such treaties, conventions and agreements between His Majesty and such foreign countries.'

You will note that, in order to cover the possible executive problem, I have provided for its entering into treaties as well as performing them.

" In line with what we believe to be the intention of the Fathers of Confederation and with the literal meaning of section 132 of the B.N.A. Act that section might be amended to read

"as follows:

'The Parliament and government of Canada shall have all the powers necessary or proper for entering into treaties, conventions and agreements and for performing the obligations of Canada or of any province thereof toward foreign countries, arising under such treaties, conventions and agreements between His Majesty and such foreign countries.'

This is in line with what we believe to be the practice in other federations and does not seem to have occasioned any difficulties in them or to have resulted in any unwarranted infringement of state or provincial rights. The restraints of political expediency, patriotism and good sense seem to have proved adequate safeguards of these rights and interests.

However, as it may be wise or necessary to protect the rights, interests and privileges of the provinces in a formal way, we would like to suggest two safeguards: (1) To provide, by a sub-heading to the revised section 132, that 'all treaties, conventions and agreements before they are ratified must receive the assent of Parliament' (i.e. the Senate and House of Commons). This would ensure discussion, criticism and, if desired, opposition and is along the lines of the United States Constitution. (2) Another safeguard would be the inclusion of another subsection of 132, or an entirely new section, to the effect that 'nothing in section 132 or in any other section of this

" Act authorizes the executive government of Canada to enter into any treaties, conventions or agreements in relation to (a) education (b) language (c) religion (d) solemnization of marriage (e) without the previous consent of the governments of all the provinces.'

As doubts might still exist in regard to International Labour Conventions, despite the acceptance of one or other of the amendments suggested above, we would like to suggest the following addition to section 132:

'The Parliament and government of Canada shall be the proper authorities to consider the Draft Conventions of the International Labour Conference and to take such action as may be necessary in regard thereto.'

If it seems unwise to recommend such measures, may we suggest a dominion provincial understanding or arrangement along the following lines:

(1) A recognition that the dominion executive is the proper authority to enter into all treaties binding upon Canada or the provinces thereof."

I submit that that must be the situation if we are to function as a nation, by reason of the requirements of international law. I quote:

" (2) An agreement -- set out in a section of the B.N.A. Act that the dominion executive may enter into a treaty, convention or agreement at the request of any province or provinces, which shall be binding upon such province or provinces but not upon any other part of

"Canada. This is contrary to the usual international practice, but it might be given recognition by other nations."

It is somewhat in line with the situation in the British Commonwealth between 1921 and 1927, and I would point out that it would make for a weakening of the federal or confederate ties; and if history means anything, if the experience of Confederation means anything it seems to prove that they do not last very long. That, however, is not an absolute deterrent. I quote:

"(3) An agreement set out in a section of the B.N.A. Act that the Dominion Parliament shall have the power to legislate in respect of such 'provincial treaties', or a promise by the provinces that they will in such cases enact the necessary legislation and will not repeal it within the period during which the treaty is in force."

If I remember rightly, I stole that from the new Indian federal constitution where you find the Indian states under the Princes. I quote:

"Some such arrangement for giving effect to treaties upon part or parts of Canada seems the only alternative to a recognition of the dominion's complete jurisdiction in this field. In my opinion an arrangement providing that all the provinces must give their assent before a treaty is negotiated and that all must implement it when ratified would prove unworkable. It might well be as difficult as getting an amendment of the Constitution itself. But none of these "Dominion-Provincial" arrangements in

"respect of treaties are likely to prove very satisfactory internationally, and centralized procedure with safeguards if necessary seems in our opinion much more desirable and workable, both nationally and internationally. In conclusion, may we again point out, that if amendment to the B.N.A. Act seems undesirable or impossible in this connection that the opinion of the Judicial Committee in the present (Reference) case was given in respect of International Labour Conventions only, and that it is arguable that it does not affect the question of more formal treaties or conventions at all. If this is true, section 132 still applies and on the evidence, the Dominion Parliament would be the authority to implement treaties made by the 'Crown' or 'His Majesty' on behalf of Canada."

The language of Lord Atkin suggests that he includes treaties as well as conventions within the prohibition.

THE CHAIRMAN: My observation was based on the view that his language did cover treaties as well as conventions and related to the treaty feature.

MR. MACKENZIE: To continue:

" One last, though far-fetched possibility does remain. The dominion government might arrange with the government of the United Kingdom to undo the work of the Imperial Conferences of 1923-26 and 1930 in respect of treaties. If this were done the dominion would then ask His Majesty's Ministers in London to advise His Majesty to make a treaty on behalf of Canada, and seemingly all would be well.

" The Dominion Parliament could then legislate in regard to the treaty, to its heart's content regardless of whether the subject matter of the treaty was in relation to or even 'affected' section 92 of the B.N.A. Act and its various subsections. As this seems to be similar to the present situation in respect of amendments of the B.N.A. Act there is at least still a precedent for it."

In conclusion I wish to point out that, as I am here representing an organization whose members have very different points of view, I am not arguing a case either for or against a certain procedure. I am not arguing for or against provincial rights or dominion rights and powers. What I am concerned with is that, in view of the importance of external affairs to Canada, we must have some adequate arrangement for taking care of one of the most important aspects of these external relations, namely, the treaty-making power; and that as a result of this recent decision of the Privy Council, there is grave doubt as to the existence in Canada of such a power. I think it is well within the jurisdiction of this Commission to give serious thought to the matter and possibly, if they see fit, to make such recommendations to the government and to the people of Canada as they conclude are wise and possible. And I am sure I am expressing the opinion of the other members of the Society in stating our appreciation of the opportunity afforded to present this question which, to us at least, seems of vital importance to everyone in Canada.

THE CHAIRMAN: Is there not an implied limitation on the power of the dominion to enter into a

treaty, namely, that it could not use the power solely for the purpose of acquiring jurisdiction in the provincial field, if it were not a bona fide exercise of the treaty-making power?

MR. MACKENZIE: There is no doubt about that, in view of the decisions of the courts in respect of what I term colourable legislation. I do not think there is any doubt about it.

THE CHAIRMAN: And I believe that same principle has been applied in the United States.

MR. MACKENZIE: Yes, it has been rigorously applied there; and there is that protection quite apart from any reservation.

THE CHAIRMAN: Have you any questions to ask, Mr. Stewart?

MR. STEWART: The interpretation you place upon section 132 of the British North America Act, Mr. Mackenzie, is this, as I understand it. You give to the expression "British Empire" the meaning, His or Her Majesty the King or Queen as the case may be, irrespective of the executive that gives the advice?

MR. MACKENZIE: Yes.

MR. STEWART: Do you not think that something very different was in the minds of the Imperial Parliament and the Fathers of Confederation at the time this Act was passed? I want to refer you to the preamble:

"And whereas such a union would conduce to the welfare of the provinces and promote the interests of the British Empire."

I do not think that meant Her Majesty the Queen, do you think so?

MR. MACKENZIE: I would not think so

MR. STEWART: One would think it meant the United Kingdom, Great Britain and Ireland and what were then known as the colonies.

MR. MACKENZIE: Yes.

MR. STEWART: Very shortly before this the Imperial Parliament had provided for the restriction of the application of its own statutes, had it not, by the Colonial Laws Validity Act?

MR. MACKENZIE: In Canada, in 1865.

MR. STEWART: Two years before this. Do you not think that the same idea was behind section 132? In other words, when the Imperial executive advised Her Majesty to enter into a treaty to apply not only to the United Kingdom but to the colonies as well, the implementing of that treaty would be qua Canada, the Parliament of Canada?

MR. MACKENZIE: I am not quite sure I follow you in reference to the limitation of the Colonial Laws Validity Act.

MR. STEWART: The Imperial Parliament had the power to make laws for the whole Empire, but they provided that unless they did so by express words or necessary intendment they would apply only to the United Kingdom?

MR. MACKENZIE: Yes.

MR. STEWART: And of course Canada would have no interest in treaties applying merely to the United Kingdom?

MR. MACKENZIE: On that I would not agree, because internationally, although the treaties may have been made by the government in Great Britain, inasmuch as His Majesty was a party to them they became binding on

all His Majesty's subjects in all parts of the Empire.

MR. STEWART: Unless the contrary was stated in the treaty.

MR. MACKENZIE: Yes; and in no case, to the best of my knowledge, except later on in commercial treaties --

MR. STEWART: I was going to mention commercial treaties. There may be many commercial treaties that apply definitely to the United Kingdom.

MR. MACKENZIE: Until they were adhered to or until the consent of the dominion had been given.

MR. STEWART: Do you not think my suggestion gives full content to section 132?

MR. MACKENZIE: No, frankly I do not. My own opinion is that the Imperial authorities in London were confronted with this situation, that every treaty into which His Majesty entered became internationally binding upon all His Majesty's subjects in all his dominions. In some cases legislation was necessary to give effect to these. By the grant of self-government, while the Imperial Parliament still had power to legislate, in practice it surrendered that power. It then became necessary to provide for those situations where the international obligation came into existence through His Majesty, and where legislation was necessary in practice in the dominions. And it was for that reason, I do not think there is any doubt about it, that section 132 was inserted in the Act.

MR. STEWART: It seems to me we could have got that idea stated with less ambiguity.

MR. MACKENZIE: I agree that they could have used different words. In the circumstances, I believe they could have done so. I may be wrong, but there was

different language in the Quebec Resolutions and in the first resolutions in the Parliament at Westminster.

MR. STEWART: I am not pressing you to accept the view I put forward; it was just a suggestion to get your reaction. The recent decision of the Privy Canada does not deny to Canada the right of making treaties.

MR. MACKENZIE: No.

MR. STEWART: The only point is that the legislation necessary to give effect must be decided in accordance with the distribution of jurisdiction under sections 91 and 92.

MR. MACKENZIE: Yes.

MR. STEWART: But there is no denial of the treaty-making power.

MR. MACKENZIE: No, although as I have suggested there is a doubt in the minds of certain people as to the transference of prerogative.

MR. STEWART: One more point. The suggestion was made that it might be possible for the dominion to acquire jurisdiction over the subjects mentioned in section 92 by reason of the making of an international agreement, which would be guarded against by the general law if the treaty were made indirectly and not bona fide for the purpose of international relations but for the purpose of acquiring additional jurisdiction. Do you not think that would have to be covered by an express provision?

MR. MACKENZIE: That has not been done in Australia or the United States.

MR. STEWART: In Australia external affairs are committed to the central authority.

MR. MACKENZIE: Yes.

MR. STEWART: And that is not so, in express words, in Canada. If His Majesty, by and with the advice of his

Canadian executive, were to enter into a treaty, do you think the bona fides of that treaty would be open to the courts of Canada?

MR. MACKENZIE: I doubt if the bona fides of the treaty would be. We would be committed internationally. But I think the possibility of the courts finding a domestic objection to that sort of legislation would be an added deterrent to the political one.

MR. STEWART: But do you not think that the invasion of provincial rights by the dominion through the making of a treaty not bona fide would have to be guarded against by express words?

MR. MACKENZIE: That has not been done in the United States or in Australia.

MR. STEWART: But similar conditions do not exist in the United States, do they?

MR. MACKENZIE: Nor has it been done in Switzerland.

MR. STEWART: The bona fides of a sovereign would not apply in the case of the United States.

MR. MACKENZIE: Why not ?

MR. STEWART: Because the crown is one and indivisible so far as we are concerned.

MR. MACKENZIE: True; but the crown, I take it, acts on the advice of the dominion ministers in such a case as you suggest, whereas in the United States the executive acts; and in Switzerland the federal authorities act. In all three cases they are competent to impose obligations upon the provinces, the cantons and the states respectively without regard to the distribution of powers within the constitutions themselves. I grant that as between ourselves and the United States there is a difference. I am not arguing for the power

in the federal authority; all I want is to see the problem solved satisfactorily. But it is well to keep in mind the experience and practice of other federal bodies.

MR. STEWART: The Australian situation is not at all clear yet.

MR. MACKENZIE: No, not by any means; but the last decisions would indicate, that subject to these two reservations it is fairly well settled -- there must be no breach of the prohibitions in the constitution, and the matter must be a bona fide international matter.

MR. STEWART: In Australia the residual power is somewhat different from that power in the Canadian constitution.

THE CHAIRMAN: In the radio case it was held that the radio convention, which was signed by Canada with the United States and other countries did not fall under 132 because it was not a treaty within the meaning of that term. It was held to fall under peace, order and good government. That view has now been rejected by the last decision of the Privy Council. Whether it was put under one head or the other would not matter greatly if it did exist; but if it does not exist under either, the point is that it should be cleared up.

MR. MACKENZIE: Yes, sir.

THE CHAIRMAN: In view of the series of decisions it is left doubtful and should be clarified.

MR. MACKENZIE: There is no question about that. That is the real purpose of the presentation.

THE CHAIRMAN: We are very much indebted to you for the very able and interesting brief you have

submitted. It must have involved a great deal of research, and it will receive our serious consideration

EXHIBIT NO.100. Brief presented by The League of Nations Society in Canada.

(The Commission adjourned at 4.30 p.m., until 10.30 a.m., Friday, January 21, 1938.)

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